202VA605

Record No. 5195

In the Supreme Court of Appeals of Virginia at Richmond

IRENE WATFORD

v.

SADIE RAE MORSE

FROM THE CIRCUIT COURT OF THE CITY OF HAMPTON

RULE 5:12—BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5195

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 10th day of June, 1960.

IRENE WATFORD, Plaintiff in Error,

against

SADIE RAE MORSE, Defendant in Error.

From the Circuit Court of the City of Hampton

Upon the petition of Irene Watford a writ of error and *supersedeas* is awarded her to a judgment rendered by the Circuit Court of the City of Hampton on the 15th day of January, 1960, in a certain motion for judgment then therein depending wherein Sadie Rae Morse was plaintiff and the said petitioner was defendant.

And it appearing that a suspending and *supersedeas* bond in the penalty of twenty thousand dollars, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8.465 and 8.477 of the Code, no additional bond is required.

RECORD

* * * * *

MOTION FOR JUDGMENT.

The plaintiff hereby moves the Circuit Court for the City of Hampton, Virginia, for a judgment against you, Irene Watford, in the sum of FIFTY THOUSAND DOLLARS, ($50,000.00), by reason of the following facts, to-wit: That on or about March 27th, 1959, at or about 7:30 P. M., on a public street called East Queen Street, in Hampton, Virginia, you, Irene Watford, without due regard for the rights of the plaintiff negligently drove a motor vehicle into the rear of a 1953 Plymouth automobile in which the plaintiff was then a passenger, and which said Plymouth automobile was at that time stopped in a lawful manner. As a result of your negligence, the plaintiff was thrown with great violence in and about the interior of the said automobile in which she was a passenger and was injured and damaged in this, to-wit: That she suffered severe bodily injuries, both internal and external, said injuries being of a permanent nature. The plaintiff has also been forced by reason of your negligent and careless acts to expend large sums of money and in the future will be forced to expend large sums of money in endeavoring to be cured of her said injuries, which have caused and will cause the plaintiff much physical suffering, mental anguish and loss of capacity to work.

WHEREFORE, because of your said negligent and careless acts, the plaintiff moves the above named Court for a judgment against you in the sum of FIFTY THOUSAND DOLLARS, ($50,000.00).

SADIE RAE MORSE, AN INFANT WHO SUES BY DALLAS MORSE, HUSBAND AND NEXT FRIEND
By WILLIAM C. PONZO

Filed in the Clerk's Office the 20 day of April, 1959.

Teste:

C. M. GIBSON, Clerk.

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page 3A }

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ANSWER AND GROUNDS OF DEFENSE.

For answer and grounds of defense, the defendant Arene Watford, by her attorney now comes and says:

FIRST: She particularly and specifically denies each and every allegation of negligence charged to her by this plaintiff.

SECOND: She denies that she was guilty of any negligence which proximately caused the accident and injuries of which complaint is made.

THIRD: She denies that this plaintiff has sustained injuries, damages or losses to the extent claimed and shall require strict proof of this plaintiff in connection therewith.

FOURTH: She denies that she breached or violated any duty or duties owing by her to this plaintiff in the premises.

FIFTH: That as to the allegations of fact, this defendant does not know whether such fact or facts exist or existed and shall require strict proof of this plaintiff in all particulars pertaining to such allegations.

SIXTH: Protesting her own negligence, this defendant states that this plaintiff was guilty of contributory negligence.

SEVENTH: This defendant states that if the plaintiff sustained injuries or damages, then such injuries or damages were the result of the negligence of a person or persons other than this defendant.

EIGHTH: This defendant states that the operator of the vehicle in which this plaintiff was riding was acting as agent, servant or employee of this plaintiff, or, in the alternative, that this plaintiff and said operator were engaged
page 4A } in a joint enterprise or endeavor and in either event, under such circumstances, the negligence of the said operator would be imputed to this plaintiff such as to preclude her recovery.

NINTH: This defendant states that the operator of said vehicle in which said plaintiff was riding was guilty of negligence.

TENTH: Protesting her own negligence, this defendant states that even if she were guilty of negligence, which is expressly denied, such negligence, if any, was not a proximate cause of the accident complained of, but a remote cause.

ELEVENTH: This defendant states that this plaintiff assumed all risks of travel incident to her status upon the highway.

TWELFTH: This defendant respectfully moves this Court to strike all allegations pertaining to expenses, bills for treatment or other expenditures allegedly incurred incident to the said accident, as such expenditures, expenses or bills for treatment are not properly a part of this case.

THIRTEENTH: And any and all other defenses which may be assigned at or before the trial or which may be developed upon trial or be justified by the evidence.

ARENE WATFORD
By LEWIS H. HALL, JR.
Her Attorney.

Filed 1959 Apr. 30, A. M. 9:30.

Book # .... Page #....City of Hampton, Va.

C. M. GIBSON, Clerk.

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INTERROGATORIES PROPOUNDED TO PLAINTIFF UNDER SECTION 8-320 OF THE CODE OF VIRGINIA.

* * * * *

3. Please state the names and addresses of all physicians to whom you have gone for treatment incident to the said accident and the amounts of their respective bills.

4. Please state the names and addresses of all hospitals to which you have gone for treatment or observation incident to the said accident and the amounts of their respective bills.

5. Please state fully your trade or occupation, your duties incident thereto, and the name and address of your employer.

* * * * *

IRENE WATFORD
By LEWIS H. HALL, JR.,
Her Attorney.

1959 Jul. 28, A. M. 8:59.

C. M. GIBSON, Clerk.

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ANSWERS TO INTERROGATORIES.

* * * * *

3. Dr. Norman Cohen, Dr. Wendell Pile, Dr. A. C. Stanton, have examined me. Only Dr. Cohen and Dr. Pile have given me treatment. The bill to date of Dr. Cohen is $300.00 and Dr. Pile's bill is $310.00 and I am still under their treatment.

4. The amount of the Dixie Hospital bill is $861.70. I was at no other hospital.

5. I am a housewife with four children.

SADIE MAE MORSE.

Filed 1959 Sep. 9, A. M. 9:05.

C. M. GIBSON, Clerk
E. H. MILLER

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page 25A }

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ORDER.

This day came the plaintiff, Sadie Rae Morse, by counsel, and advised the Court of the fact that Sadie Rae Morse has attained the age of twenty-one years.

ON CONSIDERATION THEREOF, the Court doth hereby ADJUDGE, and order that Sadie Rae Morse, having attained the said age of twenty-one years such fact be, and hereby is entered of record, in this case.

Enter: Law—Jan. 14, 1960.

DANIEL WEYMOUTH
Judge Designate.

* * * * *

page 27A } Circuit Court of the City of Hampton, Virginia on Friday, the fifteenth day of January, in the year of our Lord one thousand nine hundred and sixty.

* * * * *

This day again came the parties by their attorneys and the jury adjourned over from yesterday, and having heard the arguments of counsel, the jury retired to their room to consult of a verdict, and after some time returned into Court having found the following verdict, to-wit: "We, the jury, upon the issue joined, find for the Plaintiff, Sadie Rae Morse, and assess the damages at eighteen thousand dollars. (Signed) Albert O. Goodale, Jr., Foreman."

Whereupon, the defendant by counsel moved the Court to set aside the verdict of the jury in this cause rendered because the same is contrary to the law and the evidence; misdirection of the Court in giving certain instructions of the plaintiff over the objections of the defendant; on the grounds that the Court refused certain instructions of the defendants, and on the grounds that the verdict is excessive, which motion the Court doth overrule and to which ruling of the Court the defendant by counsel excepted and asked leave of the Court to subsequently file their bill of exceptions, which leave is granted, and the Court doth set the appeal bond at Twenty thousand dollars ($20,000.00).

It is therefore considered by the Court that the plaintiff, Sadie Rae Morse, recover of Irene Watford, defendant, the sum of Eighteen thousand dollars ($18,000.00), the damages

by the jurors in their verdict fixed, with interest thereon computed at the rate of Six per cent (6%) per annum from the 15th day of January, 1960, until paid, and
page 28A } her costs by her about her notice of motion for judgment in this behalf expended.
And the defendant be in mercy, etc.

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page 52A }

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The defendant, Irene Watford, by her attorney, hereby gives notice of appeal and makes the following assignments of error, as provided by Rule 5:1, Section 4, of Rules of Court as promulgated by the Supreme Court of Appeals of Virginia:

1. The Court erred in permitting this plaintiff's husband to testify as to this plaintiff's general condition subsequent to the accident, without a proper foundation being laid for such testimony. (Tr., p. 21, L. 5, through Tr., p. 22, L. 18.)
2. The Court erred in granting plaintiff's Instruction No. 6 over the objection of counsel for the defendant, as such instruction made the defendant an insurer, invaded the province of the jury, was too embracive, overlooked proximate cause, and did not treat the doctrine of aggravation or acceleration of a pre-existing, or latent, condition. (Tr., p. 134, L. 25, through Tr., p. 143, L. 24.)
3. The Court erred in refusing defendant's Instruction No. F offered by the defendant, as such instruction properly set forth the law under the facts, and was the heart and core of the defendant's case. (Tr., p. 156, L. 2, through Tr., p. 171, L. 25.)
4. The Court erred in granting plaintiff's motion to amend her Notice of Motion for Judgment, and thereafter refused defendant's motion for a continuance, as new subject matter was thereby injected into the trial by such amendment, and in refusing to grant counsel for the defendant a continuance, the defendant was precluded from having an opportunity to adequately prepare her defenses as to the new
page 53A } subject matter.
5. The Court erred in not sustaining the defendant's motion to set aside the verdict for the plaintiff, or in the alternative to grant a new trial, on the grounds that

the verdict was contrary to the law and the evidence, excessive on the face thereof such as to shock the conscience of the Court, and for misdirection of the jury by the Court.

It is certified that a copy of this notice of appeal and assignments of error was mailed to Mr. William C. Ponzo, attorney of record for the plaintiff, at his office in the Citizens Marine Jefferson Bank Building, Newport News, Virginia, this 4th day of March, 1960.

LEWIS H. HALL, JR.
Counsel for Defendant.

Filed 1960 Mar. 5, A. M. 8:55.

C. M. GIBSON, Clerk
City of Hampton, Va.

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OFFICER EDWARD L. RICHARDSON,
called as a witness by the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

page 7 } By Mr. William Ponzo:

Q. Will you please state your name.
A. Edward L. Richardson.
Q. And your age?
A. 30.
Q. What is your occupation?
A. Police Officer, City of Hampton.
Q. How long have you been an Officer?
A. Three years here and four and a half in Newport News.
Q. Did you in the performance of your duties investigate an automobile accident in the City of Hampton on or about March 7th, 1959?
A. Yes, sir.
Q. Do you remember the time of the accident?
A. 7:35 p.m.

Officer Edward L. Richardson.

Q. And what did your investigation disclose?

A. When I arrived, I found a 1953 Plymouth four door operated by Dallas Wayne Morse, address is 205 Hunts Neck Road, Poquoson, Virginia and a vehicle which was driven by Irene Watford, which was a 1949 Chevrolet four door. Both vehicles were headed east on Queen Street, the Morse vehicle having been struck in the rear by a vehicle driven by Mrs. Watford.

Q. Do you see Irene Watford in Court?

page 8 } A. I wouldn't remember her. I think that's her (indicating). I wouldn't say for sure.

Q. Were any statements made by the parties, Officer, any statements made by Irene Watford?

A. Yes sir, she stated that she was traveling approximately five miles per hour and she was approximately a car length behind the Morse vehicle. When she applied her brakes, the foot slipped off the brake pedal and on to the accelerator.

Q. Did you observe any—did you observe said Irene Morse at the scene of the accident?

A. Yes sir, she was in the front seat. I didn't talk to her. She was in—appeared to be in some pain.

Q. Do you know what was done for her at that time?

A. She was taken to Dixie Hospital. She was examined.

Q. How, Officer, if you know?

A. Ambulance I believe. I don't have my notes. I don't have the ambulance written on it but I'm pretty positive she was taken there but I may be wrong on that.

Q. You have no clear recollection of it?

A. No, sir.

Q. Did you accompany her to the hospital, do you remember?

A. Not that I remember, no sir. I went later on page 9 } to the hospital.

Q. Do you recall her behavior at the time you saw her in the car?

A. She was crying and seemed to be right hysterical.

Mr. William Ponzo: You can answer Mr. Hall's questions.

CROSS EXAMINATION.

By Mr. Hall:

Q. Officer, the damage to each of the vehicles was of a minor nature, was it not?

Officer Edward L. Richardson.

Mr. William Ponzo: I object to that question—to that question, your Honor. It takes the type of conclusion that should be left to the jury, a minor.

Court: Objection sustained. You have a right to tell them what injuries were done to the vehicle, if you know. Go ahead and tell, if you know.

A. The damage to the Morse vehicle was the right fender, the trunk lid, the front seat was broken. The damage to the Watford vehicle was the front bumper, approximately $45.00 damage to the Watford vehicle and fifty, fifty-five dollars to the Morse vehicle.

Court: Can you amplify the front seat? You said the front seat was broken I mean.

page 10 } A. It appears to me to be laid back. The—this would be the back of it, looked like it was broken, the hinges broken off of it where it swivel back and forth (indicating).

Mr. Hall: If your Honor please, I should like to examine my own witness if I may.

Court: What did you say?

Mr. Hall: I should like to examine my own witness, if I may at this time.

Court: Yes, go ahead. I'm not trying to stop you. He said the seat was broken. I don't know what he means by, "broken" there. You don't take the position though that the Court wouldn't have a right to ask that question? Is that the position you take?

Mr. Hall: It's our position that the Court has no right to inject itself into the case in connection with evidence that is clearly available to either party and that can be adduced.

Court: I still think he said the seat was broken. I didn't know what he meant. I wanted to know what he meant. He said the seat was broken.

By Mr. Hall:

page 11 } Q. Now, Officer, this accident occurred at a point approximately off in front of 125 West Queen Street, did it not?

A. Yes, sir.

Q. And that's approximately 200 feet to the west of the intersection of Court Street and Armistead Avenue?

Officer Edward L. Richardson.

A. I would say somewhere in that neighborhood. I don't—I believe it was in front of Leggett's Department Store, right close by Leggett's.

Q. And your investigation disclosed that there was a line of traffic up ahead of the Watford car, did it not?

A. Yes, sir.

Q. Were the cars there when you arrived, Officer? That is the line of traffic ahead of the Watford car?

A. I couldn't say whether the same cars were there or whether the cars had passed by them. I don't know—

Q. Did your investigation disclose whether or not the Morse car had struck the vehicle ahead of it as a result of the Watford car striking it?

A. If it did, the car in front of the Morse car didn't stop and tell me so or I would have had a report on him.

Q. It moved on?

A. I don't know anything about him.

Q. So your investigation—your investigation did
page 12 } not disclose that there were any vehicles involved except the Morse and Watford cars, is that right?

A. Yes, sir.

Mr. Hall: I have no further questions.

Mr. William Ponzo: Nor have I.

Court: All right sir, you can stand aside. Do you need this gentleman any more?

Mr. Hall: Oh, one other question, Officer.

CROSS EXAMINATION.

By Mr. Hall:

Q. Did Mr. Morse state to you that his car was in motion, barely moving at the time it was struck?

A. Two miles per hour.

Q. About two miles is what he approximated?

A. Yes, sir.

Q. He too was stopping in line of traffic?

A. I believe he was starting.

Q. He was starting?

A. Yes, sir.

Mr. Hall: All right, thank you.

Dallas W. Morse.

RE-DIRECT EXAMINATION.

By Mr. William Ponzo:

Q. Officer, what was the condition of the bumper on the car driven by Irene Watford?

page 13 } A. I don't have the condition. The only thing we have down here, the parts damaged. I got the front bumper. I don't have whether it was—

Q. Can you remember whether it was broken in two?

A. I would be afraid to say.

Q. Did she say when her foot slipped it hit the accelerator?

A. Yes, sir.

* * * * *

DALLAS W. MORSE,

called as a witness by the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. William Ponzo:

Q. You are Dallas Morse?

A. That's right.

Q. How old are you, Mr. Morse?

page 14 } A. Twenty-three.

Q. And what's your address?

A. 205 Hunts Neck Road, Poquoson.

Q. What do you do for a living?

A. Building contractor.

Q. Are you the husband of Sadie Rae Morse, the plaintiff in this case?

A. That's correct.

Q. Were you involved in an accident on East Queen Street in the City of Hampton, Virginia, on March 27, 1959?

A. That's right.

Court: Will you talk a little louder. Maybe they might not be able to hear you. Just a little louder.

By Mr. William Ponzo:

Q. Do you remember the time of day?

A. Not exactly. Approximately 7:30 p.m.

Q. Tell the Court and jury in your own words what happened, Mr. Morse.

Dallas W. Morse.

A. I was traveling east on East Queen. The car in front of me had stopped for a stop light on Court and East Queen Street. I was either stopped or approximately two miles per hour. I wasn't quite stopped, when the lady behind me, Irene Watford, hit me in the rear.

page 15 ⟩ Q. Do you see Irene Watford in the Courtroom?
A. I think that's her right there (indicating).

Q. Was an Officer called?

A. An Officer was called—I can't think of his name right now. Is it necessary that I have his name or not?

Q. Was an Officer called?

A. There was an Officer called. I know his name but I can't think of it.

Q. Were any statements made in his presence by Irene Watford?

A. Mrs. Watford said she went for her brakes and missed and hit the accelerator. She said she was sorry it happened and anything she could do, that she just hit it.

Q. What damage, if any, was done to the Watford car?

A. The damage I noticed, after we were pulled apart or she backed up, my car had to do some work on it before I could move it. The damage I seen to her car was the broken front bumper and the grill.

Q. Were there any passengers in your car?

A. Sadie was the only passenger.

Q. Now what happened after the impact took place?

A. Well, as soon as the impact took place Sadie was more or less completely paralyzed. She couldn't move, screaming. I got out and went around to the other side and

page 16 ⟩ opened the door. The colored Officer, he came to the assistance, called the ambulance and the Officer, so I got completely out of the way when they got to her and let the ambulance drive her and take over.

Q. How long after the accident did the *amublance* arrive?

A. Not over five minutes.

Q. In what manner was she transported in the ambulance?

A. They had to be very careful with her. Every time she made a move, she would be screaming and even when they put her on the—

Mr. Hall: Objection, if your Honor please. He asked what method was she transported. I don't think this man is in a position—

Court: Read the question back.

Dallas W. Morse.

(At this time the last question was read to the Court).

Mr. Hall: That would be something peculiar to her.

The Court: The question is clear. He asked you in what manner was she transported.

A. She was put on the stretcher and put on the ambulance and carried to the hospital. I followed later.

By Mr. William Ponzo:

page 17 } Q. What happened while they were putting her on the stretcher, if anything?

A. The only thing happened was she was screaming and carrying on. Said her back was hurting, her neck was hurting.

Q. What hospital was she taken to?

A. She was taken to Dixie Hospital.

Q. Did you seek medical attention for your wife then?

A. She was taken immediately to the emergency room. Then later on to the room upstairs.

Q. Was the doctor called?

A. The doctor—house doctor was called. Doctor Cohen was called at first but he couldn't make it so he got the house doctor to attend her. I don't know what happened in the emergency room before I went on the outside and talked to the Officer.

Q. When did Doctor Cohen come? Were you present when he came?

A. I don't recall whether he came then or not.

Q. How long was your wife—did she remain in the Dixie Hospital?

A. She remained in the Dixie Hospital a total of nine weeks.

Q. Continuous?

page 18 } A. Three weeks she was in the hospital, three weeks. Released on Friday and back in on Sunday.

Q. And how long did she remain in the second time?

A. A total of six weeks.

Q. How often did you visit her the first time she went in the hospital Mr. Morse?

A. The total number nine weeks she was in the hospital, I visited her every day.

Q. Who took her home from the hospital the first time?

A. I took her home.

Q. In a car?

A. In a car.

Q. Will you tell the Court and jury her reaction at that time?

A. When she was released from the hospital, she seemed to be all right. I took her on home. Less than eight hours later she started feeling bad. The doctor told her when she got home to stay in bed. She stayed in bed.

Mr. Hall: Objection, if your Honor please, as to the hearsay as to what someone may have told her and this witness testifying to it. I also object to his testimony as to how she felt.

page 19 } Court: Gentlemen of the jury, you have to disregard those answers. They are hearsay.

By Mr. William Ponzo:

Q. The period she was home after the first time, how did she behave?

A. The period of time she was home, like I said before, she was in a nervous condition, crying and carrying on. Wanted to go back to the doctor. I told her wait until the next day.

Mr. Hall: Objection as to what he told her, if your Honor please.

Mr. William Ponzo: Answer my questions directly.

By Mr. William Ponzo:

Q. How she behaved, not what conversation but how did she behave?

A. Well, she was in the bed all the time she was home for the first time until I took her back to the doctor.

Q. And what caused you to bring her back to the doctor?

A. Because of her nervous condition and crying and back aching.

Q. And what doctor did you bring her to then?

page 20 } A. I brought her to Doctor Cohen.

Q. And then she was re-admitted to the Dixie Hospital?

A. Re-admitted then.

Mr. Hall: Objection to the leading, if your Honor please.

Mr. William Ponzo: Well—it's already been stated. That's more of a recapitulatory question.

Court: You have to put some question marks.

Mr. William Ponzo: Excuse me?

Court: You'll have to put some question marks after your questions.

Dallas W. Morse.

By Mr. William Ponzo:

Q. How long have you been married to Sadie Rae Morse?

A. Since October 16, 1954.

Q. And how many children do you have?

A. I have four.

Q. Has your wife ever received medical treatment while you were married prior to the accident?

A. She has received medical treatment during the time she was carrying the child before childbirth.

Q. Other than the childbirth, did she have any
page 21 } medical treatment?

A. Not that I know of.

Q. Has she lived with you all that time?

A. She has lived with me all that time.

Q. Prior to the accident, what was the general disposition of your wife?

A. I would say her health—

Mr. Hall: Objection, if your Honor please, as to any inquiry being made at this time until after evidence has been adduced of a competent nature as to what her condition was subsequent to the accident. In other words the proper foundation hasn't been laid at this time and we object to lay testimony concerning her condition.

Court: I think he would have the right to ask him as to her general health before this accident, whether or not it was in—good or bad.

Mr. Hall: Well, I believe his question went further, the last question, didn't it?

Court: He heard me though. I think you have a right to ask the question of that general nature.

By Mr. William Ponzo:

page 22 } Q. Prior to the accident, what was the general health of your wife?

A. Well, the wife had four children. She got along fine with them. Naturally she would be—have a little bit of pains in the stomach. That's the only trouble she has had so far as her health was concerned.

Q. Now since the accident, what have you observed about her health?

Mr. Hall: That comes to my objection, if your Honor please, being lay testimony at this time as being substituted

for testimony as to an injury and I object to it coming in at this time.

Court: I overrule your objection. I think he has the right to tell how his own wife has acted in his own home since this accident. The things that he has observed there.

Mr. Hall: I except to the Court's ruling.

Court: Yes sir, all right. If he goes too far, we'll stop him.

By Mr. William Ponzo:

Q. Will you answer the question.

A. Read the question.

Mr. William Ponzo: Will you read the question to him?

page 23 } (At this time the last question was read to the witness).

A. She has been in a nervous condition, crying. I asked her why she was crying. She don't know. She just cried for no reason at all. She done things I never noticed before. She always used the gas stove for cooking. Twice I got up in the middle of the night and the oven would be on 300. That is something she just—just irresponsible.

By Mr. William Ponzo:

Q. Was the fire light in the oven?

A. The fire was lit in the oven.

Q. What other characteristics, behavior, have you noticed?

A. Other than her nervous condition and crying, she has been all right but she has been very nervous. The least thing I say to her she ups and gives me the devil about it. Wants to start arguing about something, no reason at all. I lived with her six years. Naturally we had arguments but there's always been a good reason. Now it doesn't take a good reason. Now I say something and she starts arguing about it.

Mr. William Ponzo: Will you answer Mr. Hall's questions, please.

CROSS EXAMINATION.

By Mr. Hall:

page 24 } Q. Did you ever forget anything?

A. Yes, sir.

Q. So you have forgotten things from time to time?
A. I think everyone has.
Q. Sir?
A. I think everyone has.
Q. I think so too. Did your car, the front of your car strike the car ahead of it?
A. No, sir.
Q. Your wife was how old when you all married Mr. Morse?
A. I don't recall whether she was fifteen or sixteen. She was right close.
Q. Fifteen or sixteen, one or the other?
A. Fifteen or sixteen, yes, sir.

Mr. Hall: I have no further questions

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SADIE RAE MORSE,
called as a witness in her own behalf, being duly sworn, testified as follows:

* * * * *

DIRECT EXAMINATION.

By Mr. William Ponzo:
Q. Will you please state your name.
A. Sadie Morse.
Q. How old are you, Sadie?
A. Twenty-one.
Q. And where do you live?
A. Poquoson, 205 Hunts Neck.
Q. Are you married?
A. Yes, sir.
Q. What's your husband's name?
A. Dallas Wayne.
Q. Do you have any children?
A. I have four boys.
Q. And what do you do?
A. I'm a housewife.

Sadie Rae Morse.

Q. Do you do anything else?

A. Nope.

page 26 } Q. Do you remember being involved in an accident on March 27, on East Queen Street in Hampton, Virginia?

A. I remember some but not much.

Q. Well, tell the Court and jury exactly what you do remember.

A. I remember being hit and my head going back. I don't remember the ambulance, getting out. I don't remember when I got to the hospital but I remember being hit. That's about all I can remember.

Q. What is your first recollection then after the accident?

A. I don't know if it's at night at the hospital or the day that Doctor Cohen came in. I remember seeing him. That was about all I remember.

Q. Do you remember what treatment, if any, was given you while you were at Dixie?

A. Not except for the insulin shots that Doctor Pile gave me and the traction on my neck.

Q. What do you recall about the traction, Mrs. Morse?

A. It just felt heavy on my neck, pulling it back.

Q. Do you have a day by day remembrance of your time spent in the hospital?

A. No, sir, I don't.

Q. Why not?

page 27 } A. I don't know. I just don't remember it.

Q. Did you have to visit the doctor after you got out of the hospital?

A. Yes, sir, I went to him.

Q. Which doctor did you go to see?

A. Doctor Cohen and Doctor Pile.

Q. For how long after you got out of the hospital did you continue to see them?

A. I have been seeing Doctor Cohen on up to now and Doctor Pile off and on.

Q. How long have you been feeling—how did you feel after you got out of the hospital, immediately thereafter? Can you tell the jury?

A. I went home about three or four weeks, I don't remember, the first time. I was home about six or seven hours when I took with a numbness in my legs and back and the next day I went to Doctor Cohen. He put me back into the hospital.

Sadie Rae Morse.

Q. What else can you tell us about this numbness, Mrs. Morse?

A. It just felt—I don't know, just felt like the blood wasn't circulating right or something.

Q. Were you given any tests by the doctor?

A. He stuck pins and things in my hand at his office which I didn't feel and was also done in the hospital by Doctor Stanton.

page 28 } Q. Did you feel them when Doctor Stanton did it?

A. A little bit but not much.

Q. Have you been given any treatments since you got out of the hospital?

A. I was given some kind of treatment at Doctor Pile's office, shots.

Q. Did Doctor Cohen treat you in any way that you remember?

A. Except for heat.

Q. Heat treatments?

A. Yes, sir.

Q. What part of the body were they applied?

A. On my back, across my spine.

Q. I show you these papers and ask you to look at them (indicating)? Do you know what they are, Mrs. Morse?

A. Dixie Hospital bills, aren't they? Yes.

Q. Will you tell the amounts of each bill?

A. One of them is four hundred sixteen eighty-five and one is four hundred thirty twenty-five.

Mr. William Ponzo: I offer these in evidence, your Honor.

Court: All right. Marked Plaintiff's Exhibit One and Two.

(The bills were received and marked Plaintiff's
page 29 } Exhibit Number 1 and Number 2).

By Mr. William Ponzo:

Q. How are you feeling nowadays?

A. Right now I feel kind of nervous and dizzy.

Q. Can you give any general example or specific example of that, rather?

A. No, except that crying spells once in a while that I never had before in my life.

Q. Now will you answer Mr. Hall's questions?

A. Yes, sir, the best I can.

Sadie Rae Morse.

CROSS EXAMINATION.

By Mr. Hall:

Q. Mrs. Morse, you spoke of having some trouble with your leg. Do you have some varicose veins in one of your legs?

A. Yes, sir, but the one I'm talking about, it wasn't this bad. The varicose veins wasn't this bad until I was in the hospital.

Q. But the varicose veins do bother you, do they not?

A. Yes, sir.

Q. And now when you were in the hospital the first time, did you come home weekends?

A. Not the first time, no sir.

Q. You didn't?

page 30 } A. The second—

Q. The second time?

A. I didn't go for the whole weekend. I went home on Sunday morning and back Sunday afternoon to take treatments.

Q. Well, you were in the hospital following your first hospitalization, isn't that true—I mean following the accident, isn't that true?

A. Yes, sir, right after the accident I was put in the hospital.

Q. And isn't it also true that you were not in the hospital on April 5th?

A. I don't remember. Was it on a Sunday?

Q. You were in there on the 4th and you came back on the 6th but didn't you go home on the 5th?

A. Was it a Sunday? The only time I went home was on a Sunday.

Q. I don't know. I'm looking at the bill here. I don't know whether it was a Sunday or not and isn't it also true that you were not in the hospital on April 12, although you were there on April 11, and April 13?

A. Yes, just for the day.

Q. That's what I say, you went home and spent the night, didn't you spend the night there?

A. No sir, I went back to the hospital.

page 31 } Q. The hospital didn't charge you for the—for the night on April 12, nor—on April 15th.

A. I can't help it. I went back that night. I reported back in at six or seven.

Sadie Rae Morse.

Q. You were home for the weekend, isn't that true?
A. I did not spend a night at home.
Q. Then you were discharged from the hospital on April 17?
A. I don't remember the date that I was discharged but I went back after I was discharged.
Q. But you were—you don't know what day you were discharged?
A. No, sir. I don't remember it.
Q. And then you went back. Now when did Doctor Pile start to treat you, Mrs. Morse?
A. The second time I went back to the hospital.
Q. And Doctor Pile is a psychiatrist, is he not?
A. Yes, sir.
Q. And how many times has Doctor Pile seen you?
A. I don't remember.
Q. Now in the latter part of October '59, you took a right long automobile trip to Kentucky, didn't you?
A. My doctor said—thought it was O.K. for me to go.

page 32 } Q. And you drove—made that trip in about thirteen hours, did you not?
A. I don't know how many hours it was.

Q. And while you were gone, your husband's sister, Phyllis, fourteen year old sister took care of the children, isn't that right?
A. Her and his mother.
Q. And he was on a hunting trip at that time, wasn't he?
A. No sir, he had not been on a hunting trip.
Q. He didn't go hunting?
A. No sir, he wasn't going until I came back.
Q. Well, he went hunting after you came back?
A. No sir, he did not go.
Q. He didn't go on that trip?
A. No, sir.
Q. I see. Now you know Mrs. Charlotte Wright?
A. Yes, sir.
Q. Mam?
A. Yes, sir.
Q. She lives at 209 Hunts Neck Road, doesn't she?
A. Yes, sir.
Q. And you also know Mrs. Rosalind Hudgins?
A. Yes, sir.

page 33 } Q. Lives at 225 Hunts Neck Road. You have been knowing them some time, haven't you?
A. Yes, sir.

Sadie Rae Morse.

Mr. Hall: We have no further questions.

RE-DIRECT EXAMINATION.

By Mr. William Ponzo:

Q. Mrs. Morse, when you went home on these weekends, how much of a weekend did you spend at home?

A. Just from the morning until the afternoon.

Q. On what day?

A. It was on Sundays.

Q. Did you spend any nights at home?

A. No, sir.

Q. Any other days than Sunday?

A. I had to check in and check out of the hospital.

Q. Did you go any other days than Sunday?

A. I went home one day on a Saturday. That was about ten to twelve.

Q. Ten o'clock to twelve o'clock?

A. Yes, sir.

Q. In the morning?

A. Yes, sir.

Q. Did you do so with permission of your doctor?

A. Yes, sir.

Q. Did he advise you to do it?

A. He told me I could as long as—just to see

page 34 ⟩ the children and then come back.

Mr. William Ponzo: No further questions.

Mr. Hall: I have no further questions. Just one other question, if I may, if your Honor please.

Court: You want her to come back? Suppose you come back to the stand. I guess it would be better. Come on back.

RE-CROSS EXAMINATION.

By Mr. Hall:

Q. Mrs. Morse, speaking of this traction that you received at the hospital, did you refuse at any time to take traction while you were in the hospital?

A. It hurt me so bad that I told them to take it off, yes, sir.

Q. So you didn't follow the doctor's instructions about using the traction, isn't that true?

A. But I didn't have it on, yes sir.

Doctor Norman Cohen.

RE-DIRECT EXAMINATION.

By Mr. William Ponzo:

Q. Mrs. Morse, did you always do that? Did you always refuse to follow the doctor's instructions?

A. No, sir.

Q. How many times did you ask them not to have traction?

page 35 } A. A couple of times.

* * * * *

DOCTOR NORMAN COHEN,

called as a witness by the Plaintiff, being duly sworn, testified as follows:

* * * * *

DIRECT EXAMINATION.

By Mr. William Ponzo:

Q. Will you please state your name.

A. Norman Cohen.

Q. And your address?

A. 1609 Aberdeen Road.

Q. Are you a duly licensed registered physician in the State of Virginia?

A. Yes, sir.

Q. Are you engaged in the practice of your profession?

A. Yes, sir.

Q. How many years, Doctor?

A. Four and a half years in Hampton.

Q. What branch of medicine do you practice?

page 36 } A. General practice, limited to internal medicine and pediatrics.

Q. From what medical school did you graduate from?

A. Teheran, Iran.

Q. Do you know Sadie Rae Morse?

A. Yes, sir.

Q. Did you know her prior to March 27, 1959?

A. Yes, sir.

Q. How long have you known her, Doctor?

A. For the first time she came to me, the first day it was, February 6, 1956.

Q. Did you ever treat her prior to March 27, 1959?

Doctor Norman Cohen.

A. Yes, sir.
Q. And for what did you treat her?

Mr. Hall: Excuse me a minute. May I be excused to go to the men's room?
Court: All right, we'll stand in recess until just a second.
Mr. Hall: Thank you, Judge.
Court: Yes, sir, go ahead.

(At this time there was a short recess after which the Court reconvened).

By Mr. William Ponzo:

Q. What—for what did you treat her prior to
page 37 } that date, March 27, 1959?

A. The first time she came to me on February second, '56. She was pregnant at that time and I delivered three of her children prior to that day, prior to the accident and—

Q. Do you recall being called in to treat Sadie Rae Morse on or about March 27, 1959?
A. I'm sorry, I couldn't—
Q. Do you recall being called in to treat Sadie Rae Morse on March 27, 1959?
A. Yes, yes sir.
Q. Who called you, do you remember?
A. Dixie Hospital. I guess the nurse, emergency room called me at that time after the accident and I saw her in the emergency room before I admitted her.
Q. Now Doctor, did you when you first saw her on March 27, 1959 make an examination of her?
A. Yes, I did.
Q. Will you describe the examination?
A. When I saw her in the examination room, she was in an acute distress and she—she did not have any loss of consciousness but she had been complaining of pain in the neck, cervical region, and all the way down the spine associated with pain in the chest and it seems to me the pain was very excruciating because she was crying and she had
page 38 } crying spells at that time and I had to admit her for further studies as far as the diagnosis, test, X-rays and the other things and—
Q. Did you make a more complete examination later on?
A. Yes, I—

Doctor Norman Cohen.

Q. At what time did you make a more complete examination?

A. Well, right after the admission I did complete examination. I did not find any fractures or anything at that time and that was proved by X-rays that we took later on but I found that she had severe spastic muscles phenomena in the back of her neck, unable to move her head freely and she had pain in entire spine by moving in any position at that time and she appeared to be somewhat dissipated with shortness of breath because by taking deep breath or cough, she had pain over her chest and neurologically at that time I could not find anything, any damages to the brain or anything like that. Of course I concentrated on the physical point of view and I probably ignored the psychological part of it, whatever I found later on.

Q. Following your examination, Doctor, did you form a conclusion and make a diagnosis as to what injuries she had sustained?

A. Yes, I did and this was proved by Doctor Stanton's diagnosis which—who I called upon.

page 39 } Mr. Hall: Objection, if your Honor please, as to what was proved by someone else, some other doctor.

By Mr. William Ponzo:

Q. What was—

Mr. Hall: You can testify as to what he found.

By Mr. William Ponzo:

Q. What was your diagnosis?

Court: Just a minute.

A. My diagnosis—

Court: Gentlemen, you'll disregard the statement that he made about what was proved by some other doctor.

By Mr. William Ponzo:

Q. What was your diagnosis?

A. My diagnosis, actually we don't make diagnosis when we admit the patient. We just give an impression as far as the first impression is more important for us and that's what

we usually put down and my first impression was whiplash injury of the neck with acute sprain of the entire spinal veretbra and contusion of the chest, mostly on the right side.

Q. Were the symptoms which you found such as ordinarily accompany a whiplash injury?

A. Yes, sir.

page 40 } Q. Are they those which you have already stated?

A. That is right. Well—

Q. Was the Plaintiff's condition in your judgment a competent and producing cause of pain?

A. Yes, it was.

Q. Did you treat the Plaintiff at the hospital?

A. Yes, I did. I attended the patient every day.

Q. And what treatment was given her, Doctor?

A. Well, as I said I concentrated on the physical condition. She has been on regular injections for pain and analgesics and medicine for muscle relaxants and of course during the first period of hospitalization she manifested different psychological disturbances like sometimes she was somewhat irrational and other times sometimes she told me that she did see different people in the room that—which wasn't true and as far as going through different moods, crying spells, one time and laughing spells which was very improper the other times and—she just continued this psychological condition for a while.

Q. Did you put her in traction?

A. Yes, yes, I'm sorry. That was another treatment that we had to give for the whiplash injury and she was in traction intermittently for about up to a week before she

page 41 } was discharged on the first admission.

Q. Did she have complaints about traction, Doctor?

A. She had.

Q. Were they unreasonable under the circumstances? Were there complaints unreasonable under the circumstances?

A. I don't believe so because in my experience when these people, they have whiplash injury they actually suffer physically from the pain.

Q. Now after her admission to the hospiatl, how long was she in the hospital on that occasion?

A. The first period?

Q. That's right.

A. She was admitted on 3-27-59, and she was discharged on 4-17-59.

Doctor Norman Cohen.

Q. Now was she later re-admitted to Dixie Hospital?

A. The day after actually the time I discharged her, she still was complaining about pain of course in somewhat lesser degrees. Because of this, psychological manifestations I noticed, I thought she may be happier to go and see her children and family and that—and then I discharged her and with continuation of the treatment as far as the pain and muscle relaxants is concerned but she came to me the day after with the same thing, maybe worse and she still had crying spells and complaining of pain in the chest and the back and the neck and she was rather shaky at that time and I page 42 } advised her for another hospitalization and I put her on the same physical treatment and in the meantime I called Doctor Pile, the psychiatric, to evaluate the other condition, the psychological condition.

Q. What interpretation did you make of what you have called the psychological condition during her first period in the hospital? What was your interpretation at that time?

A. Well actually I didn't make any diagnosis as far as the psychological manifestation is concerned. This is why I didn't even put it in the record and concentrated on the physical condition and physical part of it to alleviate her pain and her discomfort and, as I said, now that I remember that she actually went through that psychological stresses, as far as crying spells and improper laughing and sometimes even not knowing which day or what time of the day it was.

Q. Did you place then a physical interpretation on that psychological thing during her first hospitalization?

A. Yes, I did.

Q. Were you—were you mistaken?

A. Well, I have seen several of these car accidents and whiplash injuries and I—I observed them that they actually suffer—

Mr. Hall: I object, if your Honor please, as to what he has seen unless it pertains to this particular case page 43 } and I ask that he restrict his testimony as to this Plaintiff and not as to what some other matters he may or may not have seen.

Mr. William Ponzo: I believe your Honor, he can draw on his general medical experience.

Court: Don't let's go into detail about some other case. That's what Mr. Hall means. You have to tie it down with this case but of course you can draw on your general medical knowledge and experience in order to answer the questions.

You'd have to do that. Don't go into detail about some other case. You understand, don't you?

A. Yes, sir. I didn't want to go into details but I just want to say that in my experience these people, they actually suffer from these physical distresses, pain, and all these things and I contributed all the manifestations due to that sufferage from pain that she has been having and this is why I probably just missed this diagnosis which was made later on.

By Mr. William Ponzo:
Q. You called in Doctor Pile then?
A. And then on the second admission I called Doctor Pile, yes, sir.
page 44 } Q. What treatment was given her then?
A. By Doctor Pile, Doctor Pile's diagnosis was—

Mr. Hall: Objection, if your Honor please.

A. I'm sorry.

Mr. Hall: As to Doctor Pile's diagnosis.
Court: You'll have to let Doctor Pile testify to that, Doctor. You understand that. We'll let him testify as to what his diagnosis was.

A. Well, I just thought that you should know the diagnosis.

Court: After he's stated his diagnosis.

A. The treatment was insulin shock treatment.

Mr. Hall: Objection unless he rendered the treatment, if your Honor please.

Court: Did you render it yourself?

A. No, sir.

Court: You better let the doctor testify about that who rendered it.

By Mr. William Ponzo:
Q. Were you present when the treatment was given?
A. Yes, sir.

Doctor Norman Cohen.

Court: You can testify to that.

A. Still under my care.

Court: You can go ahead.

page 45 } By Mr. William Ponzo:

Q. Did you keep her under observation all the time that Doctor Pile was treating her?

A. All the time. I spent more time with her than anybody else because she was going through all these different moods and I had to sit down there and talk to her because even one time the nurse told me that she wanted to jump out of the window and she was just a little disturbed and irrational so I had to talk to her and I spent about a half an hour to an hour every morning talking to her.

Q. After she was released from the hospital, Doctor, did you continue to see her?

A. I'm sorry.

Q. After she was released from the hospital completely.

A. The second time?

Q. Yes.

A. I still continued seeing her.

Q. And did you give her treatment?

A. I gave her treatment as far as the physical condition was concerned for sleeplessness. She wasn't able to sleep. She asked me to give her some medicine. I gave it to her. She came to me, she told me that she feels weak although this weakness could have been due to that psychological manifestations but I took the blood test and—to find out

page 46 } if there is any low blood and I did all these things, yes.

Q. When was the last time you saw her, Doctor?

A. I saw her?

Q. Yes.

A. The last time I saw her was 10-10-59; October the 10th.

Q. Do you care to make a psychological diagnosis?

A. Well, I prefer not although—

Q. Will you give your reasons for not wanting to?

A. Well, I agree with what was diagnosed later on by the specialist. While I can give you that but I didn't make that diagnosis because in the first place I am not qualified psychologically and I didn't have much training for that.

Q. Was it you who called in Doctor Pile?

A. Yes, sir.

Mr. Hall: That's the third time now he said he did, that I recall you've asked him.

Mr. William Ponzo: Well, let me handle my side of the trial in my own fumbling way.

Mr. Hall: If he's going to take that position, I think three times an answer to that question is enough and I object to it any more.

Court: Those things happen. Don't go over the
page 47 } same thing.

By Mr. William Ponzo:

Q. What is your services, bill for services to date to Mrs. Sadie Rae Morse?

A. $330.00.

Q. Is that a fair and reasonable charge for the medical bills in this locality?

A. I think it is very reasonable.

Q. Do you have the bill with you?

(At this time the witness handed Mr. William Ponzo a bill).

Mr. Hall: He's already testified to that.

Mr. William Ponzo: Will you answer Mr. Hall's questions now, Doctor.

Court: Do you want to admit the bill?

Mr. William Ponzo: No, your Honor, I don't.

Court: I thought you overlooked it.

CROSS EXAMINATION.

By Mr. Hall:

Q. Doctor, during her hospitalization did she have a slight touch of pneumonia?

A. Well, I found few rales, few findings which wasn't proved by X-ray and because of the chest pain that severe chest pain that she had, so I thought could have been a patch of pneumonia but the X-ray did not prove that and
page 48 } apparently the pain was due to that contusion.

Q. There are other ways of diagnosing pneumonia other than X-rays, aren't there?

A. No, pneumonia when we make the diagnosis of pneumonia which is an infiltration in the lungs is always, as far

Doctor Norman Cohen.

as I'm concerned, shows in the X-ray because the infiltration shows in the X-ray.

Q. Then Doctor, are you saying that many cases that were diagnosed as pneumonia when in the days when it wasn't possible to get a person to a hospital, 50 miles away from X-ray and doctors diagnosed the case of pneumonia, were their diagnoses in error?

A. It must be if the X-ray doesn't show it.

Q. All of those people that had pneumonia that did not receive an X-ray diagnosis, then those diagnoses were all in error, is that right?

A. It could have been.

Q. I see. So that we had a whole lot of pneumonia back years ago that X-rays didn't diagnose accurately?

A. It could have been, yes, sir.

Q. Now as I understand it, Doctor, your examination of her neurologically was within normal limits?

A. Yes, sir.

Q. And I also understand that X-rays of the spine and also of the chest revealed no fractures?

page 49 } A. Yes, sir.

Q. And that she was discharged on April 17, 1959 from Dixie Hospital?

A. Yes, sir.

Q. And at that time her physical condition as to her chest or her neck was much improved?

A. It was improved somewhat.

Q. Otherwise you wouldn't have discharged her, would you?

A. As I say, I discharged her. I thought she was just missing her family and the children and I may help her just stop these crying spells because one time she wanted to see the babies, the children and another time she just didn't want to go home and—the mind was pretty much unsettled at that time and I thought that would probably be the only way—

Q. Doctor, is the hospital a rest cure or is it for a person who is really hurt or injured?

A. Well, that's an unfortunate thing. There is no way actually to diagnose, laboratory way or X-ray, for these whiplash injuries. There's *no* any way. We have to just use our own judgment and we have to use our—just two hands and stethoscope, that's all.

Q. I'll ask you again, didn't you feel when you discharged

Doctor Norman Cohen.

her that her condition was such that it warranted
page 50 } being discharged?
A. Warranted?
Q. Do you understand my question?
A. No, I'm sorry.
Q. When you discharged her on April 17, 1959 from the hospital, didn't you feel that her condition warranted being discharged?
A. Yes, I did.
Q. Now then—
A. Yes.
Q. That's right, otherwise you wouldn't have done it and when—and when she was re-admitted to the hospital some three or four days later, that was more for the fact that she was restless and nervous and had crying spells, isn't that true?
A. After the first discharge.
Q. Would you answer my question, please?
A. Well no, it wasn't because still complaining of the physical distresses and pains.
Q. All right, sir. Do you recall—do you recall writing a report, "her condition improved gradually and she was discharged on April 17, 1959 in order to be followed outside. She was seen in my office the following day. The pain in the cervical region was about the same as when she was dis-
charged but she continually became more restless
page 51 } and nervous, associated with a few crying spells in
my office and she was re-admitted to Dixie Hospital on April 20."
A. That's true.
Q. Wasn't it because of these crying spells and nervousness that you re-admitted her?
A. Not the only reason, as I said. Part of it was because of still complaining of the pain in the chest.
Q. Now—now Doctor, your prognosis was that it would appear that she would have a recovery without any permanent physical injury, wasn't it?
A. Yes, sir.
Q. And her physical complaints are practically gone or are gone, aren't they?
A. That's right.
Q. And the only complaint as you understand it, is one of nervousness?
A. Well, all I can say she is still pregnant and she's coming to me and I don't see that—actually she's the same one as

prior to the accident, because in the first place she's neglecting her children and she used to be a wonderful mother and she used to call me from Poquoson every time the slightest thing and she was very concerned about the children. Even now, as I said, psychologically I don't see her that she improved 100 per cent.

Q. Let's talk about the physical complaints.

page 52 } A. The physical complaints I believe is practically gone.

Q. Physicals complaints are gone?

A. Yes, yes, sir.

Q. Now did I understand you to say that she was again pregnant, pregnant now?

A. She is pregnant now.

Q. And what approximation of the month would you give us?

A. You want the expectation date or you want the approximate conception?

Q. Either one.

A. It was August 4, '59.

Q. August of '59 and the expectation would be what?

A. That of course would be according to the last menstruation period.

Q. That would—she would be, the expectation date roughly would be what now?

A. Would be about three months.

Q. I would have to count on my fingers. I thought maybe you had a different way of doing it. That's what I was getting at.

A. It's around May 12.

Q. Around May 12th. Roughly, she's in her

page 53 } fourth or fifth month of pregnancy?

A. That's right, sir.

Q. And I believe she has four children?

A. She has four children.

Q. And do you know the ages of those children Doctor, approximately?

A. Well, the second one—the first one was in 1956, was two years old about and which is 1954. 1955, about—'54 which is about the first one is four, which is now six years old.

Q. The first one is about six?

A. That's right. The second one was born around February, '56 and the second one, August, '57.

Q. That would be the third one I imagine?

Doctor Norman Cohen.

A. The third one, August '57 and the fourth one, November, '58.

Q. Thank you. So there are four—we can agree there are four relatively young children, aren't there?

A. Well, she comes from a large family.

Q. But I say, they're four relatively young children?

A. Young children. That's what she wants.

Q. She's about twenty-one years of age?

A. She's twenty-one years.

Q. Now Doctor, you saw her last on October 10,
page 54 } '59?

A. Yes, sir.

Q. When did you see her prior to that for this—in connection with this accident we're speaking of now? Oh, incidentally, let me rephrase it. When you saw her on October 10, of '59, was that in connection with—with the pregnancy or in connection with this accident?

A. No, that's just for the last one that I saw her for this condition and at that time she was complaining of weakness and she said she just doesn't feel good and I have to help her. I'm the family doctor.

Q. That wasn't in connection with the pregnancy?

A. No, not at all and this is why—that's the time I took the blood test to find out what's going on.

Q. You told us about the blood test. When did you see her prior to the 10th of October?

A. I saw her—

Q. In connection with this condition?

A. That's right, October first, I saw her, 1959.

Q. And how many times all together did you see her, Doctor?

A. After the discharge?

Q. Yes.

A. After the second discharge?

Q. After the discharge from the hospital in connection with this condition?

page 55 } A. In connection with this. Ten.

Q. Ten times?

A. Ten times.

Q. Ten times from—let's see, the discharge, the last time.

A. The discharge last was 5-23-59.

Q. From May 23, '59 to October 10, '59, you saw her ten times?

A. And besides that I received several calls from the family,

herself, and she asked me to help her and several times I sent in medicine.

Q. And the hospital, when she was there, when you would make your rounds you would see her?

A. Every day.

Q. Every day?

A. Twice sometimes.

Q. Poke your head in the door and say, "good morning"?

A. Not on this case. The other cases I may have done it but I may do it again. Not in this case because I was very much concerned and I had to help her and her husband was on my neck to find out what's going on and the whole family.

Q. You're not a psychiatrist, Doctor?

A. No, sir.

page 56 } Q. You're just a plain medical man, plain medical man?

A. Just plain, very plain.

RE-DIRECT EXAMINATION.

By Mr. William Ponzo:

Q. How many of her children have you delivered, Doctor?

A. Three.

Q. And you're treating her for the fourth?

A. This would be the fourth one.

Q. Has she ever shown any obstetric symptoms of that type? I don't know the exact medical word. Has she ever shown any complications in childbirth?

A. Never had any complications. All of them were uncomplicated cases and—I really enjoyed—

Q. Did she have any nervous reaction during childbirth?

A. Not that I recall.

Q. What is her reaction at this time, Doctor? Is there any difference?

A. Yes, still she gets those—sometimes becomes depressed and sometimes she doesn't know whether she did right to be pregnant again. She tells me she knows she's neglecting her children and her conscience is bothering her, but still she doesn't know what to do because she—she can't

page 57 } help herself and she asked me if I can help her. She's still complaining.

Q. Do you have an opinion, a medical opinion which you can state with reasonable certainty as to whether or not her child bearing had anything whatsoever to do with the psychological condition you observed in the hospital?

Doctor A. C. Stanton.

A. I don't believe so. I don't know. I don't think so.

RE-CROSS EXAMINATION.

By Mr. Hall:
Q. Can you state that it didn't, Doctor, with medical certainty?
A. No, sir.

Mr. Hall: All right, sir. I have no further questions.

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DOCTOR A. C. STANTON,
called as a witness by the Plaintiff, being duly sworn, testified as follows:

* * * * *

DIRECT EXAMINATION.

By Mr. William Ponzo:
Q. What is your name?
A. Doctor A. C. Stanton.
Q. And your address.
A. 311 Main Street, Newport News.
Q. Are you a duly licensed registered physician in the State of Virginia?
A. Yes.
Q. Are you engaged in the practice of your profession?
A. Yes.
Q. How long, Doctor?
page 59 } A. Five years.
Q. Have you specialized in any branch of medicine?
A. Yes, I have.
Q. What is your specialty?
A. Orthopedic surgery.
Q. And what does that deal with, Doctor?
A. It's a specialty that deals with diseases and injuries

to the bones, joints, muscles, ligaments, tendons, *et cetera.*

Q. Do you know Sadie Rae Morse?

A. Yes, I do.

Q. Do you recall being called in to treat the Plaintiff around March of 1959?

A. Yes.

Q. Do you recall the exact date?

A. Well, actually I saw her on April the 3rd.

Q. Who called you in the case?

A. Doctor Cohen.

Q. Did you handle the case primarily or did Doctor Cohen?

A. Doctor Cohen did.

Q. Then what was your part in the case?

A. As a consultant.

Q. When you first saw her on April 3rd, 1959 did you make an examination of her?

page 60 } A. Yes, I did.

Q. Will you describe the examination?

A. The examination, Mrs. Morse had severe pain with all motions of the neck, the upper and lower parts of her back. There was some muscle spasm present in her neck. By that we mean tightness or hardness of the muscles in the neck and she was also tender to pressure over the neck, upper part of the neck and the lower part of the back.

Q. Now following the examination did you form a conclusion and make a diagnosis as to what injuries the patient sustained?

A. Yes, I did.

Q. What was your diagnosis?

A. I felt that she had had—she had sustained a whiplash type injury or an acute strain of the neck, upper part of the back and lower part of the back.

Q. Were the symptoms which you found such as ordinarily accompany a whiplash injury?

A. Yes, they were.

Q. Was the Plaintiff's condition, in your judgment, a producing case of pain?

A. Yes.

Q. Did you treat the Plaintiff at the hospital?

A. I advised treatment.

Q. What treatment did you advise?

page 61 } A. I advised cervical halter traction. This treatment consists of placing a halter about the patient's chin in back of the head and from this halter we suspend weights at the end of the bed. This pulls the spine in

a longitudinal direction and by such, relieves pain and helps to relieve the muscle spasm that I spoke of earlier.

Q. Did you supervise the treatment?

A. I supervised that aspect of the treatment, yes. I also advised the various medications, physiotherapy, further X-rays and I advised a plastic collar to be worn when the patient left the hospital.

Q. Is the treatment of traction an efficient cause of pain, in your opinion?

A. I'm sorry, would you—

Q. Is the treatment of traction an efficient cause of pain in your opinion?

A. Is it a cause of pain?

Q. That's right.

A. Oh, I think traction can be uncomfortable but actually it probably relieves the patient's pain.

Q. That's the end result?

A. Yes.

Q. Now how long—how often did you see her, Doctor?

page 62 } A. I don't recall. I don't have records to say how many times I saw her. I saw her several different occasions prior to her discharge from the hospital.

Q. But mostly in a consulting capacity?

A. Yes.

Q. Now Doctor, assuming that Sadie Rae Morse was a normal healthy woman on March 27, 1959 and that thereafter she was involved in an automobile accident in which she was a passenger in the front seat of one vehicle which was struck in the rear end by another vehicle and thereafter showed symptoms of a whiplash injury and back injury, do you have a medical opinion which you can state with reasonable certainty as to whether or not such an accident could cause such an injury or injuries?

A. I feel certain it could cause such an injury.

Q. Is a rear end collision an unusual cause of a whiplash injury?

A. No.

Q. Could you amplify that, Doctor?

Mr. Hall: Objection, if your Honor please. He's answered the question.

Mr. William Ponzo: I asked him if he could amplify on that answer.

Doctor A. C. Stanton.

Mr. Hall: He said—
Mr. William Ponzo: He said yes. I asked him if he could amplify on that answer.
page 63 } Court: I think he has a right to answer the question, if he can.

A. We see numerous whiplash type injuries of the entire spine from rear end collisions real often. I think it's a very usual type of this type of injury.

Mr. Hall: That's what he said.

By Mr. William Ponzo:
Q. Do you have any doubt as to your diagnosis?
A. No.
Q. What is your bill to date, Doctor, for your services?
A. Twenty dollars.
Q. Is that a reasonable bill for your services?
A. I think it's most reasonable.

Mr. William Ponzo: Will you please answer Mr. Hall's questions.

CROSS EXAMINATION.

By Mr. Hall:
Q. Doctor, the purpose of traction is to relieve pain, isn't it?
A. Yes.
Q. That's the reason you gentlemen use it?
A. That's right.
Q. Now Doctor, how many times did you see her?
A. I don't recall.
page 64 } Q. You didn't see her very often if your bill is twenty dollars, did you?
A. I just don't—I don't recall how often.
Q. Two times maybe?
A. No, it was more than that. I would say four or five times.
Q. You're a little more lenient with her than you would be with me?
A. Ha! ha!
Q. About three or four times?
A. Somewhere in there.

Mr. Hall: All right sir, I have no further questions.
Mr. William Ponzo: Doctor Stanton probably wants to leave.
The Court: You are excused. You may go.
Mr. Hall: I have no objection.
Mr. William Ponzo: I should like to call Doctor Pile.
Mr. Hall: One question. Do you know whether she used the plastic collar that you recommended?
A. No, I don't.

* * * * *

page 65 } DOCTOR WENDELL PILE,
called as a witness by the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. William Ponzo:
Q. Will you please state your name.
A. Doctor Wendell Pile.
Q. And your address.
A. Queen Street, old Dixie Hospital.
Q. Are you a duly licensed registered physician in the State of Virginia?
A. I am.
Q. Are you engaged in the practice of your profession?
A. I am.
Q. How many years?
A. I have been a psychiatrist since 1946.
Q. And your specialty?
A. Psyschiatry.
Q. From what medical school did you graduate from?
A. University of Illinois.
Q. Where did you pursue your psychiatric study?
A. At Veterans Hospital, Perry Point Hospital, Eastern State Hospital, Williamsburg.
Q. Do you know Sadie Rae Morse?
page 66 } A. I do.
Q. Have you ever treated her?
A. Yes, I've treated her at the old Dixie Hospital.
Q. When were you called there to treat her?
A. April 21, 1959.
Q. Who called you in to treat her?
A. Doctor Cohen.

Doctor Wendell Pile.

Q. Doctor, when you first saw this patient did you make an examination of her?

A. I did.

Q. Wil you describe the examination?

A. When I saw the patient on the 21st of April, she was tremulous, anxious, complained of severe pains—head—pain in her back and neck. Had crying spells and was very weak and she described the fact that she had been involved as a—in a—as a pasenger in a car which was struck from behind. She was able to remember that a policeman held her head while she was admitted to Dixie Hospital.

Q. Now following this examination did you form a conclusion or make a diagnosis as to the condition of the patient?

A. I did. She was suffering from a conversion hysteria with depression.

Q. What is a conversion hysteria, Doctor?

A. Conversion hysteria is an emotional disorder
page 67 } in which a person has aches and pains for which they can find no physical pathology to account for the ache or pain.

Q. Are there any other symptoms?

A. They have symptoms of severe anxiety frequently. They have excessive sweating. Their heart beats too fast and a state of impending doom hangs over them.

Q. Were the symptoms which you found in examining this patient—

The Court: Wil you talk a little louder, Doctor?

A. Yes, sir.

By Mr. William Ponzo:

Q. Were the symptoms which you found, Doctor, such as ordinarily accompany conversion hysteria?

A. They are.

Q. Was the Plaintiff's condition, in your judgment, a producing cause of mental anguish?

A. Yes.

Q. Did you treat the Plaintiff at the hospital?

A. I did.

Q. What treatment did you prescribe, Doctor?

A. She was given sub-coma insulin shots. She was started on the 23rd of April and she was given treatments almost daily until the 23rd of May, at which time she was discharged.

page 68 } Q. Now what is the purpose of the sub-coma insulin treatment?

Doctor Wendell Pile.

A. The purpose behind this type of treatment is to stimulate the adrenal gland which produces more adrenalin which builds up the nervous system and for some reason which scientists are unable to determine, it relieves a person of the emotional symptoms that they're suffering from.

Q. In examining this patient, did you find any sensory symptoms?

A. The patient had complaints of pins and needles and prickly sensation. Neurological examination did not reveal any areas of numbness.

Q. Did she have any motor symptoms?

A. The patient complained that—of being unsteady and weak and dizzy but the neurological examination didn't reveal anything wrong with her cerebellum system.

Q. Were there any vasomotor symptoms?

A. The patient was sweating. She had dilated pupils and was very pale. All of these are indications of what they call perisympathetic stimulation, nervous stimulation.

Q. Did she—did you observe any psychic symptoms, Doctor?

A. Well, she—the symptoms that I have mentioned previously concerning the way she felt was what I noticed at that time.

page 69 } Q. You were relating them to psychic symptoms?

A. Yes.

Q. What is indicative of a negative neurological test?

A. That indicates there is no organic damage to the spinal cord.

Q. How does that relate?

A. If the person has the symptoms but you can find no cause for it neurologically, and she shows the emotional predilection to this type of a condition, you put a diagnosis of a conversion hysteria on the person like that.

Q. Do you have any doubt in your mind, as to your diagnosis?

A. I do not.

Q. As to conversion hysteria?

A. I do not.

Q. Did you continue to treat her after her discharge from the hospital?

A. I did. Following her discharge on the 23rd of May, I saw her in my office on the 29th of May at which time she stated that her nervous spells were much less. She went into more of her family background. She says that her children sort of bothered her but she felt better while before she hadn't

wanted psychiatric treatment, she seemed glad that she had had some.

page 70 ⟩ Q. What was her attitude towards psychiatric treatment in the hospital?

A. She didn't want to see me. She thought that by seeing me it meant she was crazy and she was going to be sent to Williamsburg but her family prevailed on her and Doctor Cohen did, to go ahead with the treatment and she cooperated.

Q. Is there any psychological significance to her attitude toward you?

A. I feel that she's—that it indicates that her intelligence is not—is below average or dull-normal and I also think it indicates a basic fear that she—that there may be something wrong as she's trying to avoid being sent to a state hospital for treatment.

Q. Has intelligence anything to do with conversion hysteria?

A. No.

Q. Can it happen to anyone regardless of intelligence?

A. It can.

Q. Were you able to effect a cure in the case?

A. No, the patient—if I can look at my notes here—at the time that she saw me in the May appointment, I felt that she had improved and I didn't see any need at that time for treatment so as long as she was going to continue under

page 71 ⟩ Doctor Cohen's care and his medication, I felt that was sufficient for the time being. I felt that she wouldn't be seen again until further symptoms appeared. Further symptoms did appear and she was seen again on the 19th of August where she stated she did fairly well until the middle of July when she began to get bad headaches, had dizzy spells, fell out on two occasions. She left the gas stove on all one night with the flame going and felt dazed. had a feeling as if she didn't want to do anything. At this time I felt the depression was the primary condition and she was—

Q. What is depression a symptom of? Conversion hysteria?

A. The two can go along together but this—I think she has two separate conditions. She has a conversion hysteria plus depression and psychological evaluation indicated she has always been rather a depressed person and has only gotten more depressed recently.

Q. Now Doctor, assuming that Sadie Rae Morse previous to March 27, 1959 had been enjoying good health and had never had any act of hysteria or depression, that on that day she was a passenger in an automobile struck in the rear by another automobile and thereafter showed symptoms of con-

version hysteria and depression, can you state, Doctor, with reasonable certainty whether such an automobile accident is a competent producing cause of the conversion hys-
page 72 } teria and depression which is found?

A. I can and I do.

Q. Is an automobile accident an unusual producing cause of such things?

A. It is not.

Q. On what do you base your opinion generally?

A. This patient had the—a psychological evaluation which helped determine the fact that she had a—the basic withdrawn, seclusive type of a personality who would have great difficulty in maintaining her social relationship. She had feelings of insecurity and inferiority. It's a type of person who could easily be overwhelmed by stress in the environment.

Q. Now Doctor, are you speaking of her general temperament, lifelong?

A. That's true.

Q. Without a precipitating cause, would she have ever had any trouble?

A. Probably not. She has the type of personality though that reacts quickly to stress and she'd be quick to panic and would be quick to not to handle stress well.

Q. Then how do you relate this—the automobile accident of March 27, 1959 to her general temperament?

A. That was the stress that caused the—her symptoms.

Q. Since getting out of the hospital, has she had
page 73 } any relapses?

A. Yes. I mentioned the date I saw her on the 19th of August. She was given then a mixture of three drugs which are helpful in people who are depressed. She was given several of these what we call triple shots. She was seen again on the 26th of August by me and seemed better. On the 14th of September she came in complaining of headaches. She was given medication. She was last seen by me on the 8th of January.

Q. What were your findings on the 8th of January? Is that this year?

A. That was this year, 19—60. She stated that the last three weeks has been nervous and that she screams at her children and she said her husband said he thought she needed to come back.

Mr. Hall: Objection to what her husband said, if your Honor please.

The Court: Disregard what the husband said.

A. She feels that her back has cleared up pretty well. She said her headaches were pretty good until three weeks ago and they started back. She denied any dizziness and had no more falling out spells. She still had no energy. She had depression and crying spells especially when the children aggravated her. She was placed on one of the new
page 74 } energizing drugs for her depression.

Q. What is your prognosis, if any Doctor, for the future of her condition?

A. With the patient of this psychological makeup would have to be guarded. Any stress that she might come—be forced under would tend to make her depressed and make her symptoms recur.

Q. Can you state with reasonable medical certainty whether or not her condition of conversion hysteria is permanent?

A. Reasonably certain that it would be.

Q. Is conversion hysteria curable?

A. It is curable. Most psychiatrists, when they—whenever they discharge a patient will say improved and many psychiatrists will say recovered. When people develop a set of symptoms such as Mrs. Morse have, you set up what we call a condition reflex where the—where this person has gone through a certain set of symptoms. The—the nerve impulses react—are able to go much more quickly through the same area that—that they previously had gone so it would be much easier for her to develop the same symptoms under stress than it would some other set of symptoms.

Q. Then how long would this condition last?

A. That is unknown.

Q. Is it possible—can you state with reasonable
page 75 } medical certainty that it would last for the rest of her life?

A. I can state that she would be apt to have relapses because of the personality makeup and other stresses would tend to make her have similar problems in the future.

Q. Do you contrast—do you isolate the personality away from the accident?

Mr. Hall: What was that question? I didn't hear it.

By Mr. William Ponzo:

Q. Do you isolate her personality away from the accident as the cause of her condition?

A. You mean do I feel her personality is what—can you explain your question to me.

Doctor Wendell Pile.

Q. Do you feel that her personality is the sole cause of her condition?

A. I do not. The condition is caused by the accident plus her emotional type of makeup.

Q. Now in what ways will she be effected, Doctor?

A. She will always be a nervous person. She will have a depressed attitude. Children will make her nervous. She will be very dependent; never will be able to run a household adequately herself. Her husband will always be needed for her to be dependent upon. She will continue to have aches and pains periodically, intermittently.

page 76 } Q. Will there be any neurological basis for those aches and pains?

A. Not unless something were to develop later such as a brain tumor or some other inflammatory disease.

Q. Is there anything in conversion hysteria, Doctor, that changes a person's appearance from day to day in the everyday appearance, to the lay eye?

A. That would be doubtful. Symptoms may change but I don't think there would be anything that would make her appearance seem to change. She might be—

Q. What—what would be required for a person to know whether she is suffering from conversion hysteria or not?

A. Her complaints mainly.

Q. A layman.

A. A layman.

Q. Could a layman determine whether or not she was suffering from conversion hysteria?

A. No.

Q. What background would be required?

A. You'd have to be a physician.

Q. Doctor, what is your bill for services to date?

A. I don't have any—I don't know what my statement is.

page 77 } Q. You don't have any recollection of your—

A. I don't have the slightest idea.

Q. I show you this. Does an examination of that refresh your recollection?

A. That would be about right.

Q. How much is it then, Doctor?

A. The bill is $409.00.

Q. Is that a fair and reasonable bill for—in this community for the type of medicine you practice?

A. Very.

Doctor Wendell Pile.

The Court: Four hundred nine or four hundred ninety?
Mr. William Ponzo: Four hundred nine.
The Court: Four hundred nine.
Mr. William Ponzo: Please answer Mr. Hall's questions now, Doctor.
A. Yes.

CROSS EXAMINATION.

By Mr. Hall:
Q. Doctor, is the practice of psychiatry an exact science?
A. It is not.
Q. Then when you made the statement that there's absolutely no doubt in your mind, can't there be some doubt?

Mr. William Ponzo: Now—
page 78 } A. No doubt.
Mr. William Ponzo: I object your Honor. The question is assuming law that doesn't exist. All a doctor's opinion has to be on reasonable medical certainly, not the exactness, the literal exactness of physical science so I think it's completely irrelevant and incompetent and immaterial, completely beyond the scope of my direct examination.
The Court: I think he has a right to cross examine the doctor. He will be able to take care of him. He understands these things.

By Mr. Hall:
Q. You say that the practice of psychiatry is not an exact science?
A. Not such as physics or mathematics.
Q. That's right.
A. It's dealing—
Q. Have you ever been in error?
A. You're dealing—
Q. Have you ever made a mistake?
A. I'm human. Of course I made mistakes.
Q. Sir?
A. I'm human. Of course I made mistakes.
Q. All right, sir. I thought—that was more in
page 79 } line with it. Of course where you have the practice that's not an exact science, we all make mistakes, don't we?
A. I'm sure that mistakes are made.
Q. Won't you admit that you make mistakes?

A. I think I just did.

Q. Maybe I misunderstood you. In order to get the record straight, will you admit that you make mistakes?

A. I have said previously that I'm human and I can err.

Q. You can err but my question is have you ever made any mistakes?

A. It's easier for me to recall good results that I have obtained and the good successes than the mistakes that I have made.

Q. Will you please answer my question. Have you ever made a mistake?

A. In the practice of psychiatry?

Q. Yes.

A. Or in my life?

Q. No sir—we're talking about the practice of psychiatry. Have you ever made a mistake in the practice of psychiatry?

A. I imagine I have. I don't recall what they might be.

Q. Imagination. Can't—can't we—can't you

page 80 } either say you have or have not made a mistake?

A. I really can't.

Q. You don't recall any mistake that you have ever made in the practice of psychiatry?

A. I cannot recall them now.

Q. I see.

A. I didn't know I was going to be asked for my mistakes when I came here.

Q. You're an unusual phenomena. Now Doctor, as I understand it Mrs. Morse was psychologically the type who was predisposed to emotional upsets. isn't that true?

A. Yes.

Q. And she was depressed prior to this accident?

A. She had a depressed personality.

Q. A depressed personality. And she was subject to nervousness and being high-strung?

A. Yes.

Q. And that condition would have continued whether or not she had an accident, would it not?

A. She was the type of person who was—would tend under stress to become emotionally disturbed.

Q. And for one her age, having four children and carrying the fifth within a period of five or six years, wouldn't you call that some stress and strain?

A. I would.

page 81 } Q. And having to care for them and do the housework that accompanies taking care of four small children and carrying the fifth one?

A. Yes.

Q. Now the condition for which you have been treating her is one of the mind, is it not?

A. It is.

Q. And isn't one of the symptoms fear, suggestion, or wishful thinking may be an important psychological factor in the production of symptoms while feeling of discontent or grievance may predispose to their development?

A. That is true.

Q. Now Doctor, isn't it true that if for instance, where there's litigation pending, when the litigation is concluded and terminated, doesn't that have a salutary effect on a person who tends to be depressed and nervous and high-strung as Mrs. Morse?

A. That is very true.

Q. Do you know Doctor or know of—either know or know of Doctor Alfred K. Bochner?

A. How does he spell his name?

Q. B-O-C-H-N-E-R.

A. I do not.

Q. Who is connected with Western Reserve University?

A. I do not.

page 82 } Q. A member of the American Psychiatric Association, Cleveland Society of Neurology and Psychyiatry and assistant Professor of Psychiatry at Western Reserve University?

A. Our paths have never crossed.

Q. Sir?

A. Our paths have never crossed.

Q. Would you agree with this. "Treatment which is from the standpoint of psychiatric treatment, traumatic neurosis, are very hard to treat. Many people who feel they are authorities on the subject say that there is no use attempting to treat traumatic neurosis psychotherapeutically unless the gold cure has been applied first."

Mr. William Ponzo: I object to that statement.

By Mr. Hall:

Q. Would you agree with that statement?

Mr. William Ponzo: That's a statement pulled out of context. It's not a scientific book. It's a law book. What is that book?

The Court: What are you reading from?

Mr. Hall: I am reading from a lecture of Doctor Bochner.

Mr. William Ponzo: What is the book?

Mr. Hall: The book is titled, "The Back."

Mr. William Ponzo: And who is it written for?

page 83 } It's written for lawyers about medicine.

Mr. Hall: Mr. Ponzo, this is a treatment that was written by a physician.

Mr. William Ponzo: I object, your Honor, because I know your Honor is familiar with the type of book that is written for lawyers, discusses legal things.

Mr. Hall: I can see you don't want the question answered.

Mr. William Ponzo: It is out of the province of the trial of a case.

Mr. Hall: I'm asking him if he agrees with the statement of another psychiatrist who delivered the lecture. That's what I asked Doctor—that's what I asked.

Mr. William Ponzo: No foundation of that; I never heard of Doctor Bochner.

Mr. Hall: Would the Court rule on this?

The Court: I think you ought—if you have a medical text book here of some famous doctor in this field and you want to ask the Doctor a question about it, I think you ought to show him the book, let him look at the book.

Mr. Hall: I asked him if he agreed with the

page 84 } statement of Doctor Bochner, if your Honor please.

The Court: You are assuming it was Doctor Bochner. The Court rules that you don't have any right to—you're not testifying. We don't know whether Doctor Bochner wrote what you have there or not. It might be written by somebody else or it may be it was never written at all. Now you are telling us that Doctor Bochner, this famous man, did so and so. You're not—

Mr. Hall: I ask the Court to look at it.

The Court: I think you ought to satisfy the Doctor that what you say is so.

Mr. Hall: I'd like for the Court to look at the book.

The Court: What did you say?

Mr. Hall: I would like for the Court to look at the book and see whether Doctor Bochner wrote it or not. I'm certainly not in the habit of perpetrating any fraud and I want that distinctly understood and what I quoted—

The Court: He's objecting to what you did.

Mr. Hall: What I quoted, sir, comes from that

page 85 } book and it comes from the fly page where Doctor Bochner wrote it and I resent exceedingly any in-

ference that I may have perpetrated a fraud or may have misquoted or may have misrepresented anything, if your Honor please.

The Court: The Court isn't insinuating anything. The Court is telling the jury that you are not a witness in the case.

Mr. Hall: I have not set myself up as a witness.

The Court: And you will have to—

Mr. Hall: I'm simply—

The Court: The gentleman has objected.

Mr. William Ponzo: I objected because that's a statement Doctor Bochner couldn't make in that witness stand. It's the type of statement that is shop talk between lawyers and doctors over the table. That sort of thing has no place in the law trial.

Mr. Hall: I asked him if he agrees with it, if your Honor please, either agrees—

Mr. William Ponzo: I object to the admission of it.

page 86 } The Court: Can you—can you say whether you agree—do you understand what his question was?

A. I understand the question. I cannot agree completely. I think I can tell the jury a little bit about that. It may be helpful, if I may be permitted.

The Court: If it may be helpful, go ahead.

A. The conversion hysteria is sometimes referred to as traumatic neurosis, which is the term he mentioned in that book. This is a definite entity and so listed by Alfred Noyes, who has written one of the fine text books in psychiatry. In other words, this person who has a complaint and who has diagonosed as a traumatic neurosis or a—correction, or a conversion hysteria is therefore a real entity. Now involved in this and it's recognized by psychiatrists as a fact that these people have an emotional background of hostility and depression. This, because of this background they feel that they are entitled to compensation for the injury that they have sustained. If this—they can be—this can be handled quickly, the person's symptoms, you have much better chance of this person's symptoms disappearing quickly. If it is a long litigation, the symptoms become more severe and pronounced and your chances for an improvement or a recovery are much less. I disagree with the statement Doctor Bochner or Bochner makes as far as no improvement from psychiatric help. I have had

page 87 } patients who have been severely depressed, who have received intensive psychiatric care including deep coma insulin, shock treatment from the use of

insulin, who have had to receive electric shock treatment following injuries and who have made excellent adjustments prior to any settlement made. Does that help explain the—

By Mr. Hall:

Q. Then you in part agree with Doctor Bochner, as I understand it?

A. I do.

Q. Excuse me just a minute. Do you agree, Doctor, that these—the one that has these characteristics or tendency tend to over magnify or be more than ordinarily concerned with his bodily functions and tends to interpret the slightest variations from preconceived ideas of normal functions or manifestations of disease?

A. I do, and I'd like to enlarge on that. The—they think of themselves and they tend to avoid social contacts. Their own self is magnified, brought up in importance. They would tend to not to pay as much attention to the family and be able to care for the family as—as they may have been previously been able to.

Mr. Hall: If you'll bear with me just a minute, if your Honor please.

The Court: I think you have a right to ask questions, Mr. Hall, but I don't think you have a right to say so page 88 } and so wrote so and so or so and so said so and so.

Mr. Hall: Well, I am now going to—

The Court: But you bring in books in here and more or less—

Mr. Hall: You are presupposing, if your Honor please, the question that I was going to ask. I would like—

The Court: You have a right to ask questions but when you commence telling so and so said so and so, then you raise the question that so and so isn't here. He can't be cross examined. Just ask your questions.

By Mr. Hall:

Q. And it's true, is it not Doctor, that a patient who develops a neurosis and I think the conversion hysteria is a neurosis, is it not?

A. It is.

Q. The patient who develops a neurosis after injury is one who already had the basic requisites for such a neurosis?

A. That is true. I have stated that before.

Doctor Wendell Pile.

Q. And these factors are simply precipitated into a neurosis by the injury?

A. That is correct.

page 89 } Q. Now—now Doctor, with the situation being such as it is, a young girl getting married when she's fifteen or sixteen years of age and having four children in rapid succession and a fifth one on the way and the burden that's attendant to the taking care of the home and the four children and the thought and the responsibility of the fifth coming, that would be sufficient to cause a stress on a person who already had a predisposition to enter into the character that you have described, would it not?

A. Not necessarily. It depends.

Q. But I say it could, could it not?

A. I said not necessarily.

Q. Well, does that mean that it could but not necessarily?

A. It could.

The Court: He has a right to answer the question. You cannot tie a witness down just to yes or no. He has a right to amplify his answer.

A. I would like to qualify it, the answer, and say that a lot depends on how easily this person had her babies. I talked with Doctor Cohen, who has delivered at least one of them. She has them rapidly. Labor is no problem. If you have a long drawn out labor with a woman like this, then that's a lot of stress but if you can have a one or two hour delivery with

page 90 } a woman like this, that's not much stress in comparison with a long drawn out one. This woman is a very dependent woman. She's dependent on her husband. Everything she does or has that will increase—make her more dependent is helpful to her. She gains something from that. Children help produce that dependency. They help make the family ties greater.

Q. Assuming the childbirth was normal, the care of the four children and care of the home would be a substantial responsibility of one so young, would it not?

A. It is.

Mr. Hall: I have—oh, one other question.

By Mr. Hall:

Q. Doctor, how many times did you see Mrs. Morse.

A. In all?

Doctor Wendell Pile.

Q. Yes, sir.

A. I saw her April the 21st, and in the hospital, I think there were eleven visits. Fourteen visits recorded here.

Q. Fourteen in the hospital?

A. Yes.

Q. That was her second period of hospitalization?

A. Yes, I didn't see her the first period. She was then seen in my office on the 29th of May. She was again seen on the 18th—on the 19th of August, the 26th of August.

page 91 } She then came to the office about three times a week and received shots. I did not see her on those occasions. The nurse gave her the shots. Again on the 14th of September I did not see her until the 8th of January and some further history was taken on the 13th by my psychologist.

Q. From them, what was the date in September, if I heard you correctly?

A. The last date in September that I saw her was—rather, yes, September was the 14th.

Q. From the 14th of September, until the—14th of September, 1959?

A. Yes.

Q. Until January 8, 1960 you did not see her?

A. I did not.

Q. And did you see her in connection with this trial on January 8?

A. I did not. As far as I know. She came in and she mentioned how she was doing ,stated the last three weeks she was getting nervous. Of course she knew and I was aware that this trial was coming up and I related my prior testimony what the symptoms were and what she complained of at that visit.

Q. And the trial of course could have caused her nervousness, could it not?

A. It could have, yes.

page 92 } Q. Now Doctor, how many times did you actually see her yourself? I mean you enumerated them but I overlooked counting them. Fourteen, in the hospital?

A. That would be fifteen counting my consultation.

Q. Fifteen?

A. Counting my consultation.

Q. All right, fifteen in the hospital?

A. And outside, six times.

Q. Six times; it would be twenty-one times, is that correct, sir?

A. That is correct.

Doctor Wendell Pile.

Q. And your bill is $409.00. What do you charge a visit, Doctor?

A. My office visits are ten dollars and my hospital visits *visits* vary between five and ten dollars depending on what is done and what the patient is undergoing and the type of treatment. Psychological examinations vary from fifty to $75.00, again depending on the number of examinations given and then my consultation fee varies from ten to $25.00, depending on what is done at the time of the consultation.

Q. Then in seeing her twenty-one times at ten dollars a visit it would be $210.00. The rest of it, the rest, the difference between two hundred ten and four hundred nine would be your consultations and these sort of things that

page 93 } you have described?

A. The psychological examinations, consultation, the shots she had in the office, that's correct.

Mr. Hall: All right. Thank you.

RE-DIRECT EXAMINATION.

By Mr. William Ponzo:

Q. Doctor, I would like to ask you a few more questions. As to exact science, are you willing to submit your findings in this case to any qualified psychiatrist?

A. I am.

Mr. Hall: I object to that. It has nothing to do with this case.

Mr. William Ponzo: Now your Honor—

Mr. Hall: We're trying a lawsuit here, if your Honor please. I object to that.

Mr. William Ponzo: We have had a lot—

Mr. Hall: I ask the answer be stricken.

Mr. William Ponzo: I want to know exactly what he has —he has a right to have on redirect examination to be able to speak his piece too exactly what his diagnosis means and exactly what confidence he has in it.

Court: Well, I think the question was leading to start with.

By Mr. William Ponzo:

page 94 } Q. Are you willing to submit your diagnosis to any qualified psychiatrist? It's not a leading question, your Honor.

Mr. Hall: Objection, if your Honor please.
Court: Overruled. We'll let him answer.
Mr. Hall: Not Germane.

A. I am.

Mr. Hall: Exception.
Court: All right, sir.

By Mr. William Ponzo:
Q. Now as to depressed personality, Doctor, does depressed personality mean that a person is depressed?
A. Yes.
Q. It does mean he's depressed all the time?
A. It means he's fairly chronically depressed, yes.
Q. Now what would be the difference in Mrs. Morse before the accident and after the accident as to depression?
A. It would be more severe.
Q. Now as to stresses and strains, Doctor, will you differentiate between a normal stress and strain and an abnormal stress and strain?
A. Well, a normal stress and strain would be the—what I would consider—what people have to go through in this life.
page 95 } Q. Having children—is having children normal?
A. Having children, one of the stresses.
Q. Is bringing up children one of the normal stresses and strains?
A. Yes, sir.
Q. Is making a living one of the normal stresses and strains?
A. Yes.
Q. How about automobile accidents. How do you classify them?
A. Abnormal.
Q. Do you believe that having children has had a healthful effect on her?
A. I feel so. It hasn't hurt her.
Q. Now as to gold.

Court: As to what?

By Mr. William Ponzo:
Q. As to gold Doctor Brochner that somebody—from no where has introduced into this trial. Has this girl impressed

Doctor Wendell Pile.

you, Doctor, as being primarily concerned with monetary damages in a lawsuit?

A. She did not.

Q. And Doctor, you have had occasion to deal with fakers, haven't you?

A. Yes.

page 96 } Q. And what happens when they start getting the traction?

A. What?

Q. When they start taking traction and when they start having to take insulin treatment, what do they do usually?

A. They try to get out of the situation as quickly as possible.

Q. Do they back out?

A. They try to.

Q. Is there any way a person can fake dilating his pupils?

A. No.

Q. Is there any way a person can fake sweating?

A. No.

Mr. Hall: Objection, if your Honor please. There's no evidence there has been any dilation of pupils.

Mr. William Ponzo: There certainly was on direct examination.

Court: Well, I just—

Mr. William Ponzo: The innenudo was made, your Honor.

Court: I think the question is all right anyhow so go ahead.

page 97 } Mr. Hall: Exception.

By Mr. William Ponzo:

Q. Is there any way you can simulate or fake your palpitation of your heart?

A. No.

Q. Was there a—you stated you saw her fourteen times. Was there an insulin sub-coma treatment each time you saw her?

A. There probably was not. I don't recall.

Q. How many times did she have insulin sub-coma treatments, do you know?

A. All I know is roughly two weeks. I don't recall exactly.

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IRENE WATFORD,
called as a witness in her own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hall:

Q. Now Irene, speak up as clearly and as distinctly as you can so these gentlemen can hear you and so that his Honor can hear you.

A. Yes.

Q. Your name is Irene Watford?

A. Yes, sir.

page 99 ⟩ Q. And where do you live, Irene?

A. 1217 LaSalle Avenue, Hampton.

Q. And where are you employed?

A. In Poquoson right now at the H & W Drive-in.

Q. Is that a restaurant?

A. Yes, sir.

Q. At the time of this accident last March, where were you employed?

A. At the Riverside Restaurant on Kecoughtan Road in Southampton.

Q. Now Irene, would you state to the gentlemen of the jury and to his Honor what you know about how this accident occurred that there has been testimony about today?

A. Yes. I was going down Queen Street down to the drug-store in the afternoon and it was around about ten or twelve cars in front of me and they stopped for the stop light and I trying to stop for this man in front of me and my foot slipped off the brakes and I ran into the back of him.

Q. Now Irene, what speed were you traveling when you—as you were following these cars that you have described?

A. As I was following, I was going between five and ten miles an hour and when I hit him, I had slowed up before I hit him. It was about five miles an hour when I trying to reach my brakes and my foot slipped off the brakes.

Q. What kind of shoes did you have on, Irene?

page 100 ⟩ A. I had on those white tennis shoes.

Q. Now was anyone with you?

A. My sister, Mary Lou.

Q. Do you all live together?

A. Yes, sir.

Q. Now Irene, was the blow a heavy one or a light one?

A. No, it was a light one.

Mr. William Ponzo: We object. I believe that calls for a conclusion on the part of the witness.

Irene Watford.

Court: She can state what kind of a blow it was.

By Mr. Hall:

Q. The Court has ruled you may answer the question. Would you answer it, please?

A. Yes, it was a light blow because I was going about five miles an hour behind these cars and all of them had stopped. When I got up to this last one who had stopped, I went to apply my brakes and my foot slipped off the brakes right into the floor.

Q. You mean your foot slipped off into the floor?

A. Yes.

Q. Irene, what distance if you can tell us, were you traveling behind this car that you struck?

page 101 } A. Before I struck it, it was about two car lengths. I'd say about thirty to forty feet I guess and when I struck it, I was—at least before I struck it, when he stopped, I was another car—just about one car length before I hit him.

Mr. Hall: All right. Answer this gentleman's questions, please.

CROSS EXAMINATION.

By Mr. William Ponzo:

Q. You had clear vision of ten or twelve cars in front of you, Mrs. Watford?

A. Yes, sir.

Q. Now Officer Richardson has testified that you said to him immediately after the accident that your foot slipped off the brake on to the accelerator.

A. I did not tell him that. My foot slipped in the floor. I told the Officer that's what slipped right in the floor and then hit nothing else but the floor.

Q. Now Mr. Dallas Morse has likewise testified he heard your statement to the effect that your foot slipped off the brake on to the accelerator.

A. No sir, it did not.

Q. Now you said that you were going five to ten miles an hour.

A. Yes, sir.

Q. And that after your foot went off the brake,

page 102 } that you slowed down even more.

A. Yes, I did.

Irene Watford.

Q. You had two car lengths to do all this slowing down?
A. I just had one car length.
Q. One?
A. Yes, after they stopped.
Q. You were wearing white tennis shoes?
A. Yes.
Q. You know that they are somewhat slippery?
A. They haven't been slippery. They're slippery on wet, you know, wet—like this—linoleum in here.
Q. So then the shoes themselves didn't cause your foot to slip off the brakes?
A. That might have caused it.
Q. There was nothing slippery. You weren't walking on a wet pavement, Irene?
A. No sir, I know it.
Q. Now you have testitfied it was a light blow. The Officer has testified your car was damaged. Your car was bent in front.
A. My car wasn't damaged in the front at all no more than I had a cracked bumper. That was put together just like that, (indicating). I bought it cracked and when I hit
page 103 } that car, one piece of the bumper flew up and the other piece flew back and the only dent in that car was the pan behind the bumper was dent.
Q. The bumper was split and there was a dent in your car?
A. Yes, just that little dent in the pan, back of the bumper.

Mr. William Ponzo: I have no further questions.
Mr. Hall: May I have one or two, if your Honor please.

RE-DIRECT EXAMINATION.

By Mr. Hall:
Q. Irene, you say that the car when you bought it had some damage to it?
A. Yes, it had that little split bumper. It wasn't split all the way. It was split about half way the bumper, I meant—yes, the bumper.
Q. When you put your foot or attempted to apply your brake, did you do it in the normal usual course of attempting to apply your brake?
A. No sir, just ordinary, just like I always apply my brakes.

Mr. Hall: I have no further questions.

Mary Louise Watford.

RE-CROSS EXAMINATION.

page 104 } By Mr William Ponzo:

Q. Just how far is the accelerator from the brake in your car?

A. It's—

Q. It's right there, isn't it, isn't it, the was it's designed?

A. It's just ordinarily—it was a '47 Chevvy, just ordinary like all the rest of the brakes.

Q. And your foot slipped off and missed the accelerator?

A. Yes, sir.

Q. And slammed in on the floor?

A. Yes, sir.

Q. So your car slowed down then?

A. Yes.

Q. If your car had slowed down, didn't you have time to make a recovery?

A. No sir, I didn't have time. I was too close on him then.

Q. You said you were 30 to 40 feet behind them and stated you were going around five to ten miles an hour and then your foot had—slipped off the brake. Your foot wasn't on the accelerator. You say your car was slowing down. You didn't have any chance to recover?

A. No sir, I was too close behind him.

page 105 } Mr. William Ponzo: I have no further questions.

Court: You can take you seat over at the table.

Mr. Hall: Come over here, Irene.

* * * * *

MARY LOUISE WATFORD,

called as a witness by the defendant, being duly sworn, testified as follows:

* * * * *

DIRECT EXAMINATION.

By Mr. Hall:

Q. State your name, please.

A. My name is Mary Watford. Mary Louise Watford.

Q. And you are the sister of Irene Watford?

A. Yes, sir.

Mary Louise Watford.

Q. Do you all live together?
A. Yes, sir.
Q. State to the—these gentlemen of the jury and his Honor what you know concerning an accident the latter part of March that your sister was involved in on West Queen
page 106 } Street.
A. Yes. Well, she was going on Queen Street—
Q. Let me interrupt you if I may, just a minute and speak up clearly and distinctly so everybody can hear you, Mary.
A. Well, we was going on our way to the—to the drugstone and she—kind of bumped into this man. Well, of course I don't know nothing about a car.
Q. Do you drive an automobile?
A. No, sir.
Q. You never have driven it?
A. No, sir.
Q. Do you know anything about whether or not her foot slipped off of the brake or not?
A. Well, I saw her foot when it slipped off in the floor.
Q. You did?
A. Yes, sir.
Q. Do you know your sister's car was going fast or slow at the time?
A. Well, I don't know anything about no mileage but she was going slow, slow.
Q. You don't know anything about any mileage but she was going slow?
A. Slow, yes, sir.
Q. Was the bump a hard bump or a light bump?
page 107 } A. No, sir, not a hard bump.

Mr. Hall: Answer this gentleman's questions, please.

CROSS EXAMINATION.

By Mr. William Ponzo:
Q. Did you see the car in front of you in traffic, Mrs. Watford?
A. Well, it was two or three of them ahead of this car.
Q. And did you notice how far you were behind the car in front of you before the accident before you stopped?
A. It was about ten or twelve in front of her before that bump, you know, before—
Q. Were you paying attention to how far the car was in front of you?

A. No, sir.
Q. Before you stopped?
A. I wasn't paying so much attention.
Q. What were you paying attention to at the time?
A. I was just—I never pays attention, much. I just looked around, was looking around.
Q. You were looking straight ahead, weren't you?
A. Yes.

Q. And yet you saw her foot slip off the brake?
page 108 } A. Yes, yes, sir.
Q. Didn't it slip off on the accelerator?

A. When I saw, the foot was slipping off the thing on the floor.
Q. Did it slip off the side the accelerator was on?
A. I didn't know about them part. All I know, I saw her foot slip in the floor.
Q. You saw it slip off. You don't remember where it slipped off?
A. Sir?
Q. You say you saw it slip off but you don't know which side it slipped off on.
A. I know—
Q. You never have driven a car, have you?
A. No, sir.
Q. And you can't give us much as to distances or anything like that?
A. Sir?
Q. You can't tell us very much about the distances or anything like that?
A. No, sir, I don't know.

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ROSALIND HUDGINS,
called as a witness by the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hall:
Q. State your name, please.

Rosalind Hudgins.

A. Rosalind Hudgins.

Q. Mrs. Hudgins, would you speak up as clearly and as distinctly as you can please mam, so these gentlemen can hear you and his Honor can hear you.

A. All right.

Q. Where do you live, Mrs. Hudgins?

A. 225 Hunts Neck Road in Poquoson.

Q. And do you know Sadie Rae Morse?

A. Yes.

Q. Do you live close to her?

A. Not too far. It's—

Q. She's what, 205 Hunts Neck Road?

A. Yes. I can see her home from back of mine. Of course you have to go down a little lane to get to where she lives from mine.

Q. You live at 225 Hunts Neck Road, is that
page 110 } right?

A. Yes.

Q. Can you state how long you have known Mrs. Morse, Mrs. Hudgins?

A. Approximately five years, at least that long.

Q. And during that period of time, did you have occasion to see her with some degree of frequency?

A. Yes, sir, I did.

Q. And were you aware of the fact that she was involved in an automobile accident on March 27, of 1959?

A. Yes, I was.

Q. Can you state to the Court and to the jury, Mrs. Hudgins, whether or not you have noticed any difference in her now than what you noticed her condition to be prior to this accident?

Mr. William Ponzo: Objection, your Honor. Her condition, I think we're getting into expert testimony.

Court: I think you ought to bring out how far she lives from her and—

Mr. Hall: I believe she said a short distance. She could see her house I believe, if your Honor please.

Court: I think you ought to bring out her opportunity for
knowing her activities. I don't believe you have
page 111 } gone into that quite enough.

Mr. Hall: All right. I asked her if she saw her with any degree of frequency, if your Honor please, but I'll pursue it further, if your Honor please.

Rosalind Hudgins.

By Mr. Hall:

Q. Mrs. Hudgins, can you state whether or not Mrs. Morse visited in your home or you visited in her's during the period of time that you knew her?

A. Yes, we did. We—I would say that Mrs. Morse really was in my home probably more than I was at her's but quite a few times we were thrown together, I mean at times. She would call me if she wanted to go to the store or go somewhere, had a car and we were thrown together quite often.

Q. She would go to the store with you in your car?

A. Yes, I mean all the neighbors if my car was around, they would—would call. If there was any—

Q. Do you know how many children Mrs. Morse has?

A. Yes, she has four children.

Q. And do you know the approximate age of them?

A. Well, about—I couldn't say exactly.

Q. Your best approximation.

A. I'd say the youngest one is about fourteen or fifteen months old. Then the other one would be a little over two, the other one over three and the other one a little page 112 } over four I'd say. As far as the birthdays, I don't remember that.

Q. I understand. I understand, and Mrs. Morse has visited in your home quite frequently?

A. Yes, sir, she has. She's been to my home.

Q. All right. During the period of time that you have known Mrs. Morse, Mrs. Hudgins, have you had an opportunity to see and observe her as to her physical condition?

A. Oh, yes.

Q. Can you state to the Court and to the jury as to whether or not you notice any difference in her condition now than you—

Mr. William Ponzo: I object, your Honor. He's qualified physical condition but now he's talking about condition. We have had an expert witness who has testified that a lay witness could not know much about her emotional condition and I think we're entitled to a rebuttal from a psychiatrist that a lay witness couldn't testify on that subject.

Mr. Hall: Lay witness—

Court: This lady would have to testify as to what she observed. I mean—

Mr. Hall: That's right.

Rosalind Hudgins.

page 113 } Court: The testimony here is that this lady is a housewife. She's a busy housewife. She has four children. She had the four children before this accident and your witnesses have testified that she has a permanent disability and that so on and so on. Now this lady has testified as to her observance before and after. I think she would be permitted—should be permitted to testify what she has observed as to her activities.

Mr. Hall: All right.

Court: As to her activities before and after. As to her feelings or what ailments she has, she couldn't testify to that.

Mr. Hall: No, sir, she couldn't tell as to how she feels.

Court: She can testify as to how she conducted herself in a physical way before and after.

Mr. Hall: That's right, and whether or not she noticed any difference in her.

Court: Right.

By Mr. Hall:

page 114 } Q. Mrs. Hudgins, would you state to the jury and to the Court as to whether or not you have noticed any difference in Mrs. Morse as to her condition or activities now as to what they were prior to the accident?

A. No, I haven't noticed any difference.

Mr. Hall: Answer Mr. Ponzo's questions.

CROSS EXAMINATION.

By Mr. William Ponzo:

Q. Mrs. Hudgins, your relations with Mrs. Morse are a good neighborly relation, aren't they?

A. Yes, sir.

Q. She comes down your place and buys milk, used to?

A. Used to, yes.

Q. And asked for the use of your car or asked you to drive her places, things like that, isn't that the extent of your relation with each other?

A. No, we have visited. She has come and sit and spend the afternoon with the children.

Q. I didn't—

Mr. Hall: Let her finish answering the question.

Rosalind Hudgins.

By Mr. William Ponzo:

Q. Go right ahead, Mrs. Hudgins.

A. Well, I said we have been good neighbors but we have been friendly. We haven't had—lots of time sit in the afternoon but we have spent afternoons together with the children.

page 115 }

Q. So that your relations with her are more casual and you talk about common interests, neighborhood affairs and things like that. That's about the extent of how you get along with each other, isn't it?

A. No, I would say it was more than casual.

Q. Well, go on.

A. Well, I mean we have—chatted together. It's been more than just passing casually, more than just passing the time of day.

Q. You're very, very well acquainted. You're very good neighbors together?

A. That's right, we're thrown together.

Q. She is, however, a very young girl and you are more mature than her?

A. Yes, I'm older than Sadie.

Q. And there's not that degree of intimacy, you're not what you call chummy. You're not intimate with each other?

A. I wouldn't say that we were called chums but I don't think any of the neighbors regard, even though I'm older than they are, Mrs. Wright that came with me, we all friendly. Maybe I don't act as old as some of the women my age, I'll put it that way. I have a small child myself and we all have children and we all in common even though there's a lot of difference in ages.

Q. Most of Mrs. Morse's activity, if not all, is taken up as a housewife, isn't it?

page 116 }

A. Well, I'll say she stays at home a lot with the children.

Q. And she was a good mother before the accident, wasn't she?

A. Yes, so far as I know she's a good mother now.

Q. She still is. She did the washing every day before the accident and she still does?

A. Yes.

Q. And in other words, her life was all wrapped up in her family out there?

A Yes, well—

Q. You don't however, profess to know anything about her medical condition, do you, Mrs. Hudgins?

A. No, I don't claim to be a medical doctor or know anything concerning—

Q. In other words, what you know is simply what you have seen that she acts—her actions to your eyes the same routine of a housewife today as they used to be before the accident?

A. That's right.

Mr. William Ponzo: I have no other questions.

RE-DIRECT EXAMINATION.

By Mr. Hall:

page 117 } Q. You are a woman and can and observe another woman, aren't you?

A. That's right.

Mr. Hall: I have no further questions.

Court: Are you through with this lady?

Mr. Hall: Yes, sir.

* * * * *

CHARLOTTE WRIGHT,

called as a witness by the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hall:

Q. Would you state your name, please.

A. Charlotte Wright.

Q. And where do you live, Mrs. Wright?

A. At 209 Hunts Neck Road.

Q. And do you know Mrs. Sadie Rae Morse?

A. Yes, I do.

Q. Does she live close to you?

A. Well, she lives—if it were within the city, I guess maybe a block in back of me.

Q. In back of you?

page 118 } A. Yes.

Q. And do you know the number of her house?

A. I couldn't tell you, really.

Q. How long have you known Mrs. Morse, Mrs. Wright?

A. It will be about three years in April.

Q. And how old are you, incidentally?

A. 28.
Q. If you care to tell us.
A. 28.
Q. Do you have some children?
A. Yes, I have two boys.
Q. During the period of time that you have known Mrs. Morse, have you had occasion to visit in her home and she visit in your's?
A. Yes.
Q. Have you been in her company much?
A. Well, I have been in it quite a bit. I would say yes.
Q. During the period that you have known her, have you had an opportunity to see and observe her as to her activities?
A. Well, I guess I would. I mean—we have talked with each other over the phone in different times and different things.

page 119 }

Q. Well, have you been with her in person?
A. Well, we have never been out together but—she's visited—me in my home quite a bit and I have visited of course back.
Q. And have you seen her as to whether or not—her hanging out clothes, have you observed her doing that?
A. Yes, we both wash every day so I see her practically every day.
Q. Have you seen her recently?
A. I—
Q. Other than today?
A. Not at a distance, not to talk to her.
Q. Has she been in your home recently to talk with you or when was she last?
A. No—
Q. When was she last?
A. The last time I was at her house she was—her little boy was sick and she wanted to borrow my thermometer and I took it down to her. He had a rash and his eyes were swollen and so I took it down to her.
Q. I see. And what—did he have any complaints at that time?
A. None that I could see.
Q. She make any complaints to you at that time as to how she felt?

page 120 }

A. No, the only thing that I can remember I think we were both—had varicose veins and we were discussing our leg ailments.
Q. Now Mrs. Wright, will you state to the Court and to the

jury as to whether or not you have noticed any difference in her activities and condition now as related to her activities and condition prior to the accident in March.

A. Well, the only thing that I can say is this, that I—that I don't see too much difference. If anything, she seemed a little better than before for a while after she come from the hospital.

Q. She seemed better when she came from the hospital than she was before the accident?

A. The second time, yes.

Q. Than she was before the accident?

A. Well, than she was before at times now. At times before she was—I mean she would be feeling bad or something.

Q. That was before this automobile accident of March?

A. Well, I mean it would just be like a headache or something like that like we all have.

Q. Do you know how many children she has?

A. Four, four nice boys.

page 121 } Q. Are your children somewhat the age of her's?

A. I have one little boy four and one that is seven and my little—my—of course my youngest is just around—I think is Dennis' age. He's the oldest.

Q. Dennis being one of Mrs. Morse's children?

A. Yes.

* * * * *

CROSS EXAMINATION.

By Mr. William Ponzo:

Q. Mrs. Wright, Sadie Rae Morse was before the accident and is now a good mother and housewife, isn't she?

A. Yes indeed.

Q. And Sadie Rae Morse is an honest person, isn't she?

A. Yes indeed.

Q. You don't profess to know anything about her medical interior condition, do you, Mrs. Wright?

A. I don't profess to know anything of anybody's medical condition but I know I'm a woman and I think as a woman I can sense things.

Q. Do you set your woman's intuition against a medical expert's opinion?

A. I would in some cases.

Charlotte Wright.

Q. Now, is she a good mother to these four nice
page 122 } boys?

A. She's one of the best.

Q. Does she work hard in her housekeeping?

A. She works hard and she keeps her children clean and she's a conscientious person.

* * * * *

page 123 } INSTRUCTIONS.

PLAINTIFF'S INSTRUCTION NUMBER ONE.

(Granted):

"The Court instructs the jury that the word 'negligence,' as the term is used in these Instructions, is defined to be the failure to use that degree of care which an ordinary reasonably prudent person would exercise under the same or similar circumstances. The Court further instructs the jury that if you find from a preponderance of the evidence that the defendant drove her automobile negligently and that such negligence was the proximate cause of the injury to the plaintiff, then you will find for the plaintiff against the defendant."

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PLAINTIFF'S INSTRUCTION NUMBER TWO.

(Granted):

"The Court instructs the jury that 'proximate
page 128 } cause' is that which produces an injury directly, or in the natural and normal sequence of events without the intervention of any independent, intervening cause. It is the direct and immediate cause, the predominent cause which, acting directly or in the natural sequence of events, produces the accident and resulting injury, and without which the injury would not have occurred."

* * * * *

PLAINTIFF'S INSTRUCTION NUMBER THREE

(Granted):

"The Court instructs the jury that if you find from the greater weight of evidence, and under the instructions of the Court, that the plaintiff is entitled to recover, then you should determine the amount of damages, if any, from the facts and circumstances proved by the evidence, pertaining
page 129 } to such damage. In doing so, you may take into consideration the nature and extent of the plaintiff's injuries, if any, which were the proximate result of the occurrence in question; her suffering in body and mind, if any, resulting from such injuries, if any; such future suffering and loss of health, if any, as she will sustain by reason of such injuries, if any; all monies which the plaintiff has necessarily expended, if any, and the bills which she necessarily became liable to pay, if any, and being treated for such injuries; and you may find for the plaintiff in such sum as will be fair compensation with respect to such of the foregoing elements as have been proved by the greater weight of the evidence."

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PLAINTIFF'S INSTRUCTION NUMBER SIX

(Granted):

page 135 } "The Court instructs the jury that if you find that the plaintiff had a condition which made her more subject to injury than a person of normal health, nevertheless the defendant is legally responsible for any and all injuries and damages which may have been suffered by the plaintiff as a proximate result of the negligence, if any, of the defendant."

Mr. Hall: If your Honor please, the defendant, Watford, objects to plaintiff's Instruction Number Six on the grounds that it is too embracive; that it again invades the province of the jury and in some measure smacks of making the defendant an insuror.

Mr. William Ponzo: There's a misspelled word there. "Do" to should be "due".

Mr. Hall: He has a damage Instruction. I'm mindful of the fact that—what he's approaching in this—Number Six but if your Honor please, I believe Number Six is, as drawn, is not a proper treatment of that subject.

Mr. William Ponzo: I don't know how else you can treat it.

Court: The wheel might run over me, you see. Maybe I might be a wrestler and the wheel wouldn't hurt me but if the wheel runs over a frail person why it might mess them up, you see, and that is due to the—that is due to the kind of physical condition that the injured person brought page 136 } to the situation when it arose. That is another way of putting it but your client brought to this situation a highly susceptible state of facts for—to take on this new injury there. Isn't that right?

Mr. William Ponzo: That's exactly my point.

Court: Yes. Now the fact—the fact that she came on the scene with this physical makeup that some other person would not have, would not relieve them from liability and they would —they really would be liable, assuming they're at fault. They really would be liable not for the fact that she came on the scene with these handicaps but they would really be liable for their aggravation that they caused her, if you want to put it that way.

Mr. William Ponzo: "Nevertheless the defendant is legally responsible for any and all injuries and damages which may have been suffered by the plaintiff." Which is not an aggravation. Any and all injuries, which a negligent person is anyhow. "Any and all injuries and damages which may have been suffered as a proximate result of the negligence, if any, of the defendant even though those injuries due to said condition may have been greater than those which would have been suffered by a normal person under the same circumstances."

Court: Well, the doctor tells us that she had a condition there that generally speaking, it has to be triggered and he says that is the thing that triggered it but he says page 137 } other things could trigger it and he, as I understand his testimony, he feels like that is one of her great problems in the future is that she—her makeup is such that she just handles stress and strain so poorly. That's what he said. She handles it so poorly and I suppose the implication would be that now she has had this mess up, she's going to make a worse job the next time she's confronted with some other situation. Now what he's getting at, he doesn't feel that

this whole—we ought to be careful in the Instruction that we don't unload the whole thing on his client because the testimony isn't that they brought on this condition. She had the condition but that isn't so strange or so unusual. If you go right back to the illustration that the frail person who gets under the wheel or what would injure one person might not injure another person.

Mr. Hall: That's right.

Mr. William Ponzo: No question about that but I don't see it changes the law.

Court: "The Court instructs the jury that if you find the plaintiff had a condition which made her more subject to injury than a person of normal health". Well, the first thing, the Court instructs the jury that if you find the plaintiff had a condition which made her more subject to the injury that she sustained—that's what we're talking about. It isn't specific enough in that instance; made her more subject
page 138 } to the injury that she alleges she sustained than a person of normal health, than a person of normal health. Does that help it any?

Mr. William Ponzo: You've got to give them the law on the issue.

Court: "Nevertheless the defendant is legally responsible for any and all—all injuries and damages which may have been suffered by the plaintiff as a proximate result of the negligence, if any, of the defendant even though those injuries due to said condition may have been greater." Even though those injuries due to said condition may have been greater than those which would have been suffered by"—I think you seal him off there. The injury even though those injuries due to said condition have been—may have been greater than those which would have been suffered by a normal person under the same circumstances. We're probably getting right technical here. In other words, the injuries are over and above what she had, isn't that right?

Mr. William Ponzo: "The Court instructs the jury if you find the plaintiff had the condition which made her more subject to injury that she alleges she sustained, the defendant is legally responsible for any and all injuries and damages which may have been suffered by the plaintiff as a proximate result of the negligence and for aggravations of condi-
page 139 } tions of the plaintiff pre-existing the injury."

Court: I believe that's better.

Mr. Hall: I don't think it cures it, Judge.

Court: It's loose jointed.

Mr. Hall: Yes sir, I don't think it cures it at all.

Court: Suppose you have a person in the car and—just

looked, they're riding; maybe it's this man's wife. Maybe they're meeting head-on and she's such a nervous person, all that sort of thing, that she just—she just opens the door and sails right out. She opens the door and sails right out and messes herself up and lo and behold, he gets the brakes on before he hits the car. You can say that that accident triggered the thing if you could show the man she was meeting was over on her side of the road and that sort of thing but would he be the proximate cause?

Mr. William Ponzo: You have an altogether different case of injury without impact. Now that's always been a fine point in the law.

Court: Suppose I don't hit them.

Mr. William Ponzo: Certainly.

Court: If she acted reasonably—maybe that isn't too good an illustration.

(At this time the Court then re-read the Instruction).

page 140 } Court: Do you need the balance of it there (indicating)? How about if you stop—

Mr. William Ponzo: Proximate result of the negligence.

Court: Yes sir, such negligence, if any. I think we ought to have, "if any."

Mr. William Ponzo: Withdraw it, Judge.

Mr. Hall: Let me re-examine it, if I may.

Court: Yes sir, that's right.

(At this time the Court then returned to the Courtroom and the jury resumed their seats in the jury box).

Court: Gentlemen of the jury, it's obvious to the Court we will not be able to conclude the case today so you'll be excused until 10:00 o'clock tomorrow morning. The same things I told you about not talking about the case goes and of course if you have to go down the street, why we wouldn't stop you from going down there but please don't take any trip to see the scene of the accident. You understand that. I mean sometimes I find that jurors will go around to look at the spot or look at the place. I mean don't do that. How-
page 141 } ever, if you have to drive down that particular street, you wouldn't have to take some route to go around. I don't mean that. You know what I am talking about not to make some specific trip. So we'll see you tomorrow morning at 10:00 o'clock.

(At this time the jury was then excused and the Court and the attorneys for both sides then retired to the Chambers of the Court).

Mr. Hall: I still have an objection, if your Honor please. "The Court instructs the jury that if you find the plantiff had a condition which made her more subject to injury than a person of normal health, nevertheless the *the* defendant is legally responsible for any and all injuries and damages which may have been suffered by the plaintiff as a proximate result of the negligence, if any, of the defendant." It's the position, if your Honor please, of the defendant, Watford, that the amendment made in Instruction Number Six has not cured the objection. It's our feeling that it is still too embracive and again it invades the province of the jury and makes this defendant an insuror. Now we speak of the word, "subject to injury". Is it actually or is it precipitation or acceleration or aggravation of a latent or pre-existing condition? Then we come on down and use the all em-
page 142 } bracive term, "responsible for any and all injuries and damages." Again, we find the term, "injury" used and I submit, if your Honor please, that the Instruction is defective for the reasons assigned now and heretofore assigned when Instruction—plaintiff's Instruction Number Six was initially discussed.

Mr. William Ponzo: When you really come down to it, if you start, "nevertheless the defendant is legally responsible for any and all injuries and damages which may have been suffered by the plaintiff as a proximate result of negligence, if any, of the defendant" you got a legal truism. It is just so true.

Court: I think we'll have to take it like it is. Maybe it could be improved upon but—I think generally speaking it's the law.

Mr. Hall: We except to the Court's ruling, as I say, for the reasons heretofore assigned. Actually she wasn't subject —more subject to injury, if your Honor please.

Mr. William Ponzo: Yes, she was.

Mr. Hall: Than anyone else. There's no evidence she was more subject to injury that I recall. The evidence is that she had this depressed condition and that it could be triggered off by any number of things and Pile, the psychia-
page 143 } trist felt it was triggered off by this automobile accident.

Court: I think when say though, "any and all injuries

which may have been suffered by the plaintiff as a proximate result of the negligence" I think that cures your mistake—I mean your comment. In other words, if he is able to convince this jury that nine-tenths or all of these are due to the condition she had, why zip there goes your case. You understand that. Of course the women's testimony there, it's in line with that theory, what appears to be maybe his theory of the case. She was like this before and she still is; that she had an injury. That is one way you can look at it. It began and then she was hurt. That was terminated. She got well. The doctor discharged her. On the other hand, if they disregard his contention and accept her view of it one hundred per cent, why you really have a big case then. A woman twenty-one years old is going to be messed up for the balance of her life. I mean—so this way you have to be careful with it. I'm in the category Mr. Hall was talking about when Mr. Hall was talking about the doctor making mistakes. I make a lot of them. Anyhow, we'll go along.

Mr. Hall: We have the exception, do we not Mr. Reporter, and the reason.

Court: Granted.

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page 146 } DEFENDANT'S INSTRUCTION "A"

(Granted):

"The Court instructs the jury that in every civil action for money damages the burden is upon the plaintiff in the suit to prove liability against the defendant by a preponderance of the evidence. This burden rests upon the plaintiff throughout the entire trial and applies at every stage thereof. The jury cannot infer negligence on the part of the defendant from the mere happening of the accident.

"The Court further instructs you that a verdict cannot be based, in whole or in part, upon surmise or conjecture, nor be influenced by any sympathy for the injured person, or the desire to see such injured person compensated.

"The law does not undertake to hold a person who is sued for money damages liable in every accident. Damages are allowable only after legal liability has been first established.

"Your verdict therefore, should be based solely upon the evidence introduced and the instructions given you by this Court as to the law applicable to the case.

"Therefore, under the oaths, you cannot find a verdict in favor of the plaintiff Morse against the defendant, Watford,

unless and until the plaintiff has proven by a preponderance of the evidence that the defendant is guilty of the negligence charged against her, and that such negligence if any, was a proximate cause of the accident and injuries of
page 147 } which complaint is made."

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DEFENDANT'S INSTRUCTION "B" (Granted):

"The Court instructs the jury that the credibility to be given to the testimony of every witness is exclusively for the jury, and the jury, in determining the weight to be given to the evidence of a witness, should consider in connection therewith his interest, if any, in the results of the case, his apparent intelligence, candor and fairness, and his demeanor while testifying, and give such credit to his testimony as he is fairly entitled, from all of the other facts and circumstances appearing at the trial."

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DEFENDANT'S INSTRUCTION "C."

(Granted):

"The Court instructs the jury that the defend-
page 152 } ant, in any event, would not be liable for anything other than injuries actually caused by the accident in question, and it is not sufficient to prove that the plaintiff has suffered from causes which may have possibly resulted from the accident. She can only recover, if recovery be had, for damages which are shown by the evidence, with reasonable certainty, to be the direct result of the accident."

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DEFENDANT'S INSTRUCTION "E."

(Granted):

"The Court instructs the jury that the defendant, Watford, in the operation and management of her automobile, was required to exercise that degree of care which an ordinary, reasonable, prudent person would have exercised under the circumstances and conditions obtaining, and if you believe from the evidence that the defendant, Watford, so did, then the Court instructs you she was not guilty of negligence, and you must find your verdict for the defendant, Watford."

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DEFENDANT'S INSTRUCTION "F."

(Refused):

"The Court instructs the jury if you believe from the evidence that the defendant, Watford, was operating her automobile in an easterly direction on Queen Street, in the exercise of reasonable care, behind a line of traffic which was likewise moving easterly, and that the vehicle ahead of her was stopped or almost stopped, and that the defendant in the exercise of reasonable care put her foot on the brake in ample time to bring her vehicle to a stop and thereby avoid striking the rear of the vehicle ahead of her, and in so putting her foot on the brake her foot slipped off through no negligence of her's, and as a result thereof the defendant's vehicle ran into the rear of the vehicle in which the plaintiff was riding, then under such circumstances the Court further tells you that if you believe the defendant was not otherwise negligent in the operation and management of her vehicle, causing the accident in question, you must find your verdict for the defendant."

Mr. Hall: I think that "F"—I believe that "F" has a different connotation than "E". I was going to make some comment on it.

Mr. William Ponzo: I think "F" narrows down the issue of negligence here. I'm trying to find out how it does so.

Mr. Hall: It's the defendant's case, if your
page 157 } Honor please.

Court: "Stopped or attempted to stop".

Mr. Hall: There's some evidence that it was moving at two miles an hour.

Court: "Stopped or almost stopped".

Mr. Hall: That would be all right. That would be better. I think that would be better.

Court: "Or almost stopped and that the defendant put her foot on the brake"—"the defendant put her foot on the brake to bring her vehicle to a stop"—I think you got to bring into the element at that point and time she put it on the brake, you see. It could be too late.

Mr. William Ponzo: That's it. There are so many other duties.

Court: "And that the defendant put her foot on the brake to bring her vehicle to a stop". I think you have to get that she did it at such a time under all the circumstances.

Mr. Hall: I think we can do it. "And that the defendant in the exercise of reasonable care". Wouldn't that do it?

Court: That's right.

Mr. Hall: "That the defendant in the exercise of reasonable care".

Court: "Exercise of reasonable care."

page 158 } Mr. Hall: Or, "ordinary care" either one. That's all she is required to do. Isn't it, "ordinary care"?

Court: "The defendant put her"—

Mr. Hall: "That the defendant".

Court: "Defendant put her foot on the brake."

Mr. Hall: "The defendant in the exercise of ordinary or reasonable care" either one. "Of ordinary care".

Court: "Ordinary care".

Mr. William Ponzo: We got a lot of circumstances.

Court: We're really concerned with the time when she put it on there.

Mr. Hall: Wouldn't that be ordinary care?

Court: I think it would be but I don't believe it would be quite expressive to the jury there.

Mr. William Ponzo: She's got—

Court: "The defendant put her foot on the brake to bring the vehicle to a stop". What we really mean, at a proper time she put it on. That's what we really mean and that's what you mean.

Mr. Hall: That's right, that's right; to avoid the collision, that's right.

Court: "And that the defendant put her foot on the brake in ample time to bring her vehicle to a stop."

Mr. Hall: That's all right.

page 159 } Court: "In ample time". "And that the defendant put her foot on the brake in ample time". That's really what he is saying.

Mr. Hall: That's right.

Court: "To bring her vehicle to a stop and in so doing her foot slipped off the brake through no negligence of her's." That's got to go in there.

Mr. Hall: All right.

Court: Isn't that right?

Mr. Hall: I agree with that.

Court: "Through no negligence".

Mr. Hall: If she was negligent in that—

Court: "Through no negligence of her's." In other words, you do have such a thing as an accident, you know, with your foot. You can have such a thing as an accident without negligence, isn't that right?

Mr. William Ponzo: Yes sir, if her story was absolutely true and they believe it.

Court: "And in so doing her foot slipped off the brake through no negligence of her's and as a result thereof the defendant's vehicle ran into the rear of the vehicle in which the plaintiff was riding, then under such circumstances the Court tells you that the question of whether or not this defendant was guilty of actionable negligence in a question of fact for the jury."

page 160 } Mr. Hall: Since we have put in there "through no negligence of her's" I think some of this (indicating) ought to come out.

Court: Yes. In fact we don't need it.

Mr. Hall: No sir, we don't need it. "The Court tells you" let's see. No sir, we don't need it the way we have it now.

Court: If they believe that, why it wasn't negligence.

Mr. Hall: No sir, no sir.

Court: If they actually believe that.

Mr. Hall: That's right.

Court: "The Court instructs the jury if you believe from the evidence that the defendant, Watford, was operating her automobile in an easterly direction on Queen Street in the exercise of reasonable care behind a line of traffic which was likewise moving easterly and that the vehicle immediately ahead of her in which this plaintiff was riding stopped or almost stopped and that the defendant put her foot on the brake in ample time to bring her vehicle to a stop and in so doing her foot slipped off the brake through no negligence of

her's and as a result thereof the defendant's vehicle ran into the rear of the vehicle in which the plaintiff was riding, then" —"was riding, then under such circumstances"—

page 161 } Mr. Hall: "The Court tells you that the defendant was not guilty of negligence."

Court: "Was not guilty of negligence", if they believe it.

Mr. Hall: "Not guilty of negligence." "She was not guilty of negligence and you must find for the defendant."

Court: If this thing she claims she did in ample time was the sole proximate cause of the accident, then she would not be guilty of negligence, isn't that right?

Mr. William Ponzo: Now let me see. The amendment stops at—

Court: "And as a result thereof the defendant's vehicle ran into the rear of the vehicle in which the plaintiff was riding."

Mr. William Ponzo: "Then under such circumstances the Court tells you that the question whether or not this defendant was guilty of actionable negligence is a question of fact for the jury."

Court: If they believe that is the sole proximate cause of the accident.

Mr. William Ponzo: Where do you stop?

Mr. Hall: Down, "then under such circumstances the Court tells you that the defendant was not guilty of negligence and you must find your verdict for the defendant."

Court: We don't want to eliminate other things you see.

page 162 } We have got to tell them if that's the only thing on which they are to base their verdict on because they might think—

Mr. Hall: I see.

Court: She was going to fast.

Mr. Hall: I see the Court's point. I think we can get that in there.

Court: "And in so doing her foot slipped off of the brake through no negligence of her's and as a result thereof the defendant's vehicle ran into the rear of the vehicle in which the plaintiff was riding, then if you believe"—"then if you believe"—

Mr. Hall: "Then if you believe".

Court: "If you believe".

Mr. Hall: "The defendant was not guilty of further negligence you must find your verdict for the defendant."

Court: That is true. That is what we are getting at. That's the way it's stated. "Then if you believe that the slipping of

her foot off the brake was the sole proximate cause of the accident then you must find for the defendant."

Mr. Hall: That's right.

Court: Can't you get that in there? In other words, if that's all there was to it—.

Mr. William Ponzo: The whole thing is just sitting there and looking at the slipping of the foot.

page 163 } Mr. Hall: She's entitled to her defense. If they believe it and it looks to me she didn't have enough sense to tell a lie about it—

Mr. William Ponzo: The Instruction has got to give all the facts. You got to present both sides.

Court: You are right about that.

Mr. Hall: Let's see. "Then under such circumstances the Court tells you that if you believe"—"then under such circumstances the Court tells you that if you believe the slipping of the foot off of the brake was the sole proximate cause of the accident, you must find your verdict for the defendant". Isn't that the law?

Mr. William Ponzo: My objection is this. Juries don't understand legal terms so well and when you put facts in there, you better put all the facts in there or you are going to mislead them.

Court: I don't believe you can put them all in there.

Mr. Hall: This is the defendant's theory of the case.

Court: There is such a thing as being an accident without there being legal liability and you have plenty of damages, we understand that, but to isolate and separate this slipping of the foot off of the brake when it absolutely is the gist of this case, it could be—I mean it could be the very thing that would

page 164 } —the Court would really be deciding the case and taking it away from the jury. You have the element of how she put her foot on the brake when she put it on there. You have even got the evidence whether or not she was wearing the right kind of shoes. In other words, some people might think my God, you might as well be barefooted as having those tennis slippers.

Mr. Hall: You got here that the defendant in the exercise of ordinary care put her foot on the brake. That's the only care required of her.

Mr. William Ponzo: You got all law.

Mr. Hall: Isn't an Instruction dealing with the law?

Mr. William Ponzo: This is a fact Instruction, finding of fact.

Court: You have the question, you have the overall question of running into the back of the car. You are really behind

the eight-ball when you run into the back of the car regardless of the reason.

Mr. Hall: Judge, this is the defendant's case.

Court: I understand that and I don't think it's far off but I really believe that in this particular case I believe you have the question there—I believe I'm wrong in saying she put it in ample time. I think that's one of the necessary ingredients but as I think about it, there are other factors. It would be the factor of how she put it on there,

page 165 } whether she put it on too fast or or slowly.

Mr. Hall: Isn't that a matter of argument?

Court: I'm taking all of those things away from them. If she put it on there in ample time, then she has the duty to put it on there properly and she has the duty to keep it on there and has the duty to shove the pedal down and how she did that and her reactions, I believe we're getting into matters of fact that the jury should pass on.

Mr. Hall: Let me read the defendant, Watford's Instruction "F". That's the one we're dealing with. Let me read it as I have made one or two changes.

Court: Go ahead.

Mr. Hall: And see if it's not the law. "The Court instructs the jury if you believe from the evidence that the defendant, Watford, was operating her automobile in an easterly direction on Queen Street in the exercise of reasonable care behind a line of traffic which was likewise moving easterly and that the vehicle immediately ahead of her in which this plaintiff was riding stopped or almost stopped and that the defendant in the exercise of ordinary care put her foot on the brake in ample time to bring her vehicle to a stop and in so doing her foot slipped off of the brake through no negligence of her's, and as a result thereof the defendant's vehicle ran into the rear of the vehicle in which the plaintiff was riding, then under such circumstances the Court tells

page 166 } you"—let me back up. "Then under such circumstances the Court tells you that if you believe the slipping of the foot off of the brake was the sole proximate cause of the accident in question, you must find your verdict for the defendant."

Court: I think we are telling them which we have already told them if she wasn't guilty of any negligence which was the proximate cause of the accident, why then she's—I mean if she wasn't guilty of that she can't recover and I believe in order to correct it we have to get into the field of these finding instructions with big capital letters. I'll have to refuse it.

Mr. Hall: Let me make this suggestion, Judge, because this is the—

Court: I know it is.

Mr. Hall: This is the core of the defendant's case.

Court: I know it is but the Court is almost taking it away from the jury by making these fine distinctions and I don't believe we can do that. I believe there's so many others—

Mr. Hall: Let me see if this doesn't cure it. This thought occurred to me and I'll read the first part of it.

Court: This is for them to determine.

page 167 } Mr. Hall: Yes sir, but let me read—let me read the first part of the Instruction. I'll have to in order to put in this curative phrase.

Court: Go ahead.

Mr. Hall: "The Court instructs the jury if you believe from the evidence that the defendant, Watford, was operating her automobile in an easterly direction on Queen Street in the exercise of reasonable care behind a line of traffic which was likewise moving easterly and that the vehicle immediately ahead of her in which this plaintiff was riding stopped or almost stopped and that the defendant in the exercise of ordinary care put her foot on the brake in ample time to bring her vehicle to a stop and in so doing her foot slipped off of the brake through no negligence of her's, and if the defendant was otherwise free from negligence"—"was otherwise free from negligence and as a result thereof the defendant's vehicle ran into the rear"—

Court: I really believe—I really believe in all probability what you have said is the law but I don't believe we have the the right to tell it to them just because it is the law because I think we are picking the thing out and pinpointing it right down to a gnat's eye and it's a finding Instruction.

Mr. William Ponzo: It's the same thing as my taking a statement of say, Doctor Pile should be my

page 168 } stronger witness and with all the law, all Doctor Pile—

Mr. Hall: You're talking about medical.

Court: Suppose you put it in the shape you now offer it and we can pass on it.

Mr. Hall: Let me—I was going to say, with the Court's permission—

Court: You're not going to be able to get your record straight with the way it is now.

Mr. Hall: With the Court's permission, let me redraw the Instruction.

Court: And then present it and we'll pass on it.

(At this time Mr. Hall then presented the amended Instruction).

Mr. William Ponzo: I have the same objection, Judge. It would be the—exactly the same if I took one highlight fact of the case and built up the whole case around it. The law might be right if I gave an example of one of my witnesses say, if you find that his testimony supported by the others and that—in other words, the same thing as being done here. He's got in here operating at reasonable care. He's got "not otherwise negligent" but still the fact, it's being highlighted here. It's all the trimmings around one single fact and that could be highly misleading to a jury when many facts must be considered. The abstract statement of law is being—in

page 169 } other words, you have one fact highlighted and about maybe seven or eight abstract statements of law to cover that fact, surround a fact and that can be highly misleading to a jury. If you are going to state facts, state all the facts or at least a sufficient number to give a clear picture to the jury.

Mr. Hall: That is the defendant's theory of the case and it is—and it is our judgment that we have covered it fully. We have inserted in it all of the safeguards that I know of for the plaintiff but this is the defendant's theory of the case and Mr. Ponzo's analogy of taking out some witness' testimony and putting it in an Instruction, that's not this case. This is the defendant's theory of the case and the manner in which it happened and it is the defendant's evidence, not only her evidence but the evidence of such witnesses as testified in her behalf and she's entitled, if your Honor please, to an Instruction embracing her theory of the case and it seems to me that certainly all of the objectionable matter has been deleted and if anything, the Instruction now bends over backwards with the safeguards in it. We have reasonable care innumerable times in there. We have, "and if you believe the defendant was not otherwise negligent in the operation and management of her vehicle causing the accident in question." I don't know how we could be more embracive than we are.

Mr. William Ponzo: It simply belies the

page 170 } function of an Instruction. An Instruction is supposed to have its place, supposed to give a statement of the law and it's supposed to give a picture of the case as a whole as much as possible. You're not supposed to highlight a fact in such a way as to make the whole case depend on it. I can't do it right off-hand. I imagine given ten minutes aside and no sense in doing it but I could take one fact of the case, if you find that the defendant's bumper was broken and then go on from that and wrap the law around it.

Mr. Hall: He's confusing—

Mr. William Ponzo: The same thing any fact in the case.

Mr. Hall: He's confusing a trivial matter with the heart and core of the defendant's case. This is the heart and core of the case. It's not the question of a broken bumper or anything of that sort. This is her case and she's entitled to have her case before the jury and the Court so instructs them and if—if it can be safeguarded more, I don't know how I can safeguard it more. I have excluded everything I can think of.

Court: Of course like we said a while ago, this is the very highly desirable thing that a lawyer tries to do. I mean he likes to do this because he can use the Instruction to argue before the jury but I really do believe even though it—as far as I can tell, it probably states the law but it's a

page 171 } finding; that's what it is. It is a finding Instruction. It is—it is whittling the thing down to its—its most most favorable aspect, whittling it right down and putting a sharp point on it and emphasizing it and telling now if it is that, then you do so and so when maybe they—they have a right to believe it isn't that at all. They even have the right to go into the question of how she put her foot on there—

Mr. Hall: If your Honor please—

Court: But we tell them no negligence. I doubt if that takes care of it. I'm going to have to refuse it and you can take your exception. I might be wrong.

Mr. Hall: We except.

Court: I believe you just knock his case right out almost when you do this.

Mr. Hall: We except to the ruling of the Court in refusing the defendant, Watford's Instruction Number "F" on the grounds that it is the defendant's theory of the case; that the Instruction fully, amply and adequately sets forth the theory and the law dealing therewith and for the reasons—and for the reasons heretofore assigned and the refusal to grant the Instruction is highly prejudicial to the rights of this defendant and does not permit this defendant to have her full day in Court and disrobes her, as it were, of her legal clothing to which she entitled when she stands before the jury.

page 172 } DEFENDANT'S INSTRUCTION "G" (Granted):

"The Court instructs the jury that if it appears to you after hearing and considering all of the evidence and circumstances in this case that it is just as probable or likely that the defendant was not negligent, as it is that she may have been guilty of negligence which was a proximate cause of the accident, then the law requires you to find your verdict for the defendant."

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Mr. Hall: The defendant, Watford, objects to the Court permitting the plaintiff to amend the suit or enter an order suggesting the plaintiff is 21 years of age and thereby putting at issue in the trial of the case certain matters that the suit as now pending does not put at issue, namely medical expnses, hospital bills and any other expenses looking towards the infant plaintiff's cure. The defendant, Watford, feeling that if such an amendment is permitted, then a continuance should obtain in order to permit the defendant to adequately prepare for trial to meet the new issues as the suit is now more embracive than the old suit which was then pending

page 179 } and excepts to the Court's forcing the defendant into trial under the circumstances recited above.

Mr. William Ponzo: I simply would say that the issue as presented by the trial is exactly the same. We pleaded medical damages. If they had a defense of infancy at the inception, it was altered by the fact that when the thing was actually brought into the Courtroom by the defendant, it was brought up in the motion to strike those allegations, it was put in the answer and was never brought to the Court's attention and certainly would have been argued in Court on the day of trial if ever, and at that time the defense would not have obtained. Secondly, the defendant responded to the issue by filing interrogatories and receiving answers to questions asking for medical bill. The medical bills provided in the interrogatories were of great length of time for preparation of trial. They had a very early date relative to trial date with substantially the same amounts as were introduced into evidence so that it didn't alter the defendant's knowledge of the case or opportunity for investigation of the case. That's all, sir.

page 180 } Mr. Hall: The defendant, Watford, objects and excepts to the Court permitting the plaintiff to introduce into the trial of this case mortality tables dealing with the life expectancy of this plaintiff on the grounds that the evidence as adduced by the plaintiff does not justify the application of the mortality table in that there's no permanency as to this plaintiff; there's no evidence in which it is indicated that she will have any permanency resulting from this accident in which competent medical authority has stated with a reasonable degree of certainty.

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Mr. Hall: Yes sir, if your Honor please. We move to set the verdict aside on the grounds that it is contrary to the law and the evidence; on the grounds that the Court misdirected the jury in that it granted certain Instructions on behalf of the plaintiff over the objection of the defendant and that it refused certain Instructions offered by the defendant which were material and germane to the case and the heart and the core of the defendant's theory of the case and on the further ground that the verdict is excessive.

Court: Well, the Court feels that it's a jury question and we'll have to overrule your motion and note your

page 182 } exception.

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A Copy—Teste:

H. G. TURNER, Clerk.

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